

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: CR-15-4268 JB
6 ANGEL DELEON, et al.,
7 Defendants.
8
9

10 Transcript of excerpt of testimony of
11 BRYAN ACEE
12 April 12, 2018, April 13, 2018, and April 16, 2018
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1 April 12, 2018

2 THE COURT: All right. Does the
3 Government have its first witness or evidence?

4 MR. CASTELLANO: Yes, Your Honor. The
5 United States calls Special Agent Bryan Acee.

6 THE COURT: Mr. Acee, if you'll come up
7 and stand next to the witness box, my right, your
8 left, before you're seated, Ms. Bevel will swear you
9 in.

10 BRYAN ACEE,
11 after having been first duly sworn under oath,
12 was questioned and testified as follows:

13 THE CLERK: Please be seated, and please
14 state your name for the record.

15 THE WITNESS: Good afternoon. My name is
16 Bryan Acee; B-R-Y-A-N, A-C-E-E.

17 THE COURT: Mr. Acee. Mr. Castellano.

18 MR. CASTELLANO: Your Honor, if I may have
19 a moment?

20 THE COURT: You may.

21 MR. CASTELLANO: Thank you, Your Honor.
22 May it please the Court.

23 THE COURT: Mr. Castellano.

24 DIRECT EXAMINATION

25 BY MR. CASTELLANO:

1 Q. Agent Acee, we only have one working
2 microphone. I'm going to use the one here.

3 Go ahead and tell us your name and your
4 occupation, please.

5 A. My name is Bryan Acee. I'm an FBI Special
6 Agent currently stationed in Albuquerque.

7 Q. Can you tell the members of the jury about
8 your training and experience, please?

9 A. I've been an FBI agent for the past
10 nine-and-a half years. I've been a law enforcement
11 officer for just about 20 years. I was a police
12 officer and a detective before joining the FBI.
13 When I started out my career, I worked patrol, like
14 most new police officers do. Sometime later, I was
15 promoted to a detective position. And throughout
16 the rest of my career, I've worked investigations;
17 primarily drugs and gangs.

18 Q. How is it that you got involved in the
19 investigation of things like drugs and gangs?

20 A. Well, I guess I had an interest there, and
21 I made a lot of drug and gang arrests. In doing so,
22 I was able to develop some informants that were
23 within gangs. And in law enforcement, if you have
24 some success doing that, you usually find yourself
25 on a task force or promoted to a detective level

1 position where you get to work that sort of thing.

2 Q. Where have you worked over your years in
3 law enforcement?

4 A. I started my career in Los Angeles,
5 California; I later worked in the Portland, Oregon,
6 southwest Washington area, in the Pacific Northwest;
7 I worked here in Las Cruces; I've spent a little bit
8 of time in Mexico. And I'm currently assigned to
9 Albuquerque.

10 Q. Since you're currently assigned in
11 Albuquerque, what are your responsibilities now?

12 A. I'm what you call a street agent or a case
13 agent. That's my full-time job. I have some
14 collateral duties at the FBI. For example, I'm a
15 firearms instructor. So when the agents have
16 qualifications at the range, if I'm not in court or
17 otherwise tied up, I'll help out at the range.

18 The FBI has SWAT teams located around the
19 country. I'm one of the team leaders for this
20 region, so I supervise and train with FBI agents
21 that are assigned to the SWAT team. And I serve as
22 a training agent to new FBI agents. When they
23 graduate the Academy and they're assigned to the
24 Albuquerque office, I'll work with them for their
25 first one to two years as they are developing as FBI

1 agents.

2 Q. As a training agent, what types of things
3 are you teaching them?

4 A. At the Academy, which lasts about seven
5 months, they learn, in kind of a sterile
6 environment, report writing, interview skills, and
7 driving skills, and arrest scenarios. And I take
8 all of that and I put it into -- I try to work with
9 them to put it into an everyday context in the real
10 world, working on the streets and doing real
11 interviews and arrests.

12 So I work with them on that. I review
13 their reports, help them become full-fledged FBI
14 agents.

15 Q. As part of your responsibilities, are you
16 ever involved in teaching?

17 A. Yes, sir, I am. I serve as an adjunct
18 instructor for the FBI, which allows me to conduct
19 training for the FBI and other Department of Justice
20 or law enforcement agencies in the area of gangs,
21 drugs, and the Mexican drug cartels. I've also
22 served as a guest instructor at the University of
23 New Mexico, and here in Las Cruces at NMSU, for
24 those same topics.

25 Q. Have you ever previously been qualified as

1 an expert in court before?

2 A. I have, several times in state court in
3 California, Oregon, Washington; and in federal court
4 in California, Oregon, Washington, and here in New
5 Mexico, to include in this court.

6 Q. And what types of areas or topics?

7 A. Primarily drug distribution or possession
8 of a controlled substance with intent to distribute,
9 as well as I've been recognized by this court as an
10 expert in the Juarez Drug Cartel.

11 Q. Does that mean at some point in your
12 career you've also investigated members of the
13 Juarez Cartel?

14 A. I did. I spent about five years on a task
15 force that specifically investigated the Juarez Drug
16 Cartel, and I was partnered with Mexican officials
17 in that endeavor in Mexico City to investigate and
18 then ultimately indict the leadership of the Juarez
19 Cartel.

20 Q. And does the FBI consider you an expert in
21 any subject matter?

22 A. Yes. The FBI has recognized me as what we
23 call an SME, or a Subject Matter Expert, in the
24 Juarez Cartel and the SNM Prison Gang.

25 Q. What types of training have you had

1 related to firearms?

2 A. In terms of like an expertise in court, I
3 went through the Bureau of Alcohol, Tobacco,
4 Firearms and Explosives, firearms specialist, to
5 become a certified firearms specialist. And that's
6 an important designation in our work, in that we
7 have to show a firearm traveled in interstate nexus
8 in order to charge it in relation to federal crimes.

9 So that course pertained to that, the
10 identification of firearms, as well as interstate
11 nexus.

12 Q. Through your training and experience, are
13 you aware of any firearms that are manufactured in
14 New Mexico, for example?

15 A. I am not aware of any firearms
16 manufactured in New Mexico.

17 Q. Are you considered the lead case agent in
18 this case?

19 A. Yes, sir, I am.

20 Q. Can you tell the members of the jury how
21 you first got involved in this case, please?

22 A. I'll keep it short. I was up at the
23 Penitentiary of New Mexico in Santa Fe. I was doing
24 a separate prison gang investigation with some of my
25 counterparts in California. We were actually

1 investigating a prison gang that was expanding from
2 California to New Mexico.

3 And while I was up there, I was contacted
4 by some members of the Security Threat Intelligence
5 Unit, or the STIU. That's the prison gang unit.
6 And they told me that, through one of their
7 informants, they'd intercepted a bunch of letters
8 that were addressed to SNM members on the street
9 directing them to kill the Secretary and the head of
10 the STIU.

11 Q. When you say "the Secretary," it's the
12 secretary of what department?

13 A. The Cabinet Secretary of the New Mexico
14 Corrections Department.

15 Q. Who was that person?

16 A. Gregg Marcantel.

17 Q. And you mentioned the head of the STIU.
18 Who was that person?

19 A. Dwayne Santistevan.

20 Q. In the course of this investigation, did
21 you learn of any other threats against any other
22 prison personnel?

23 A. Yes. I learned that there was also a hit
24 or a threat out on an STIU coordinator named Adam
25 Vigil.

1 Q. And you said at some point they turned
2 over letters to you; is that correct?

3 A. Yes. In this case, the SNM informant
4 turned them over to the STIU. There were a total of
5 nine letters. And the informant was able to collect
6 eight of them under the guise that he had the
7 ability to mail them out discretely. And those
8 letters were turned over to me.

9 Q. Did you later meet that informant?

10 A. I did.

11 Q. Who was that person?

12 A. His name was Eric Duran. He went by the
13 alias of Crazo.

14 Q. You mentioned you were at PNM. What does
15 PNM stand for, and where is that location?

16 A. The Penitentiary of New Mexico, and it's
17 in Santa Fe. It's actually not one facility. There
18 are three there, three separate prison facilities at
19 PNM.

20 Q. What are those facilities?

21 A. There is a Level 6, which you guys will
22 often hear referred to as The North, simply because
23 it's on the northern end of the property. There is
24 The South, which is the Level 5 or the Level 4. I
25 don't want to say -- or it's both the Level 5 and

1 the Level 4, and it's in the south -- the southern
2 end of the property. And then there is a Level 2
3 facility there.

4 Q. And I won't ask you to go into it too
5 much, but you mentioned Levels 5, 4, and 2. Do
6 those numbers mean something to corrections
7 personnel in terms of security and other things?

8 A. Yes. The higher the number, the higher
9 the security; the lower, the lower the security.

10 Q. What did you do in response to receiving
11 information about potential threats to corrections
12 personnel?

13 A. We initiated an investigation. We formed
14 a federal task force to investigate it, and we did.

15 Q. Can you tell the members of the jury who
16 some of your partners were on the task force in
17 terms of agencies?

18 A. It was the FBI, the New Mexico Corrections
19 Department. And within the New Mexico Corrections
20 Department, it was primarily the STIU, the gang
21 unit. At that time, early on in the investigation,
22 we were doing a lot of street work, so I also had
23 full-time partners from the Bernalillo County
24 Sheriff's Office in Albuquerque. Those would be
25 what I would call the daily full-time task force

1 officers.

2 And then we also established a liaison
3 relationship with the cold case homicide units from
4 around the state, as well as all the county jails
5 that housed SNM members or suspected members.

6 Q. What do you mean when you refer to a "cold
7 case"?

8 A. Many of the police departments or
9 sheriff's departments, state police around the
10 country, have cold case units. And that's a
11 designation for homicide units that work cases that
12 have gone cold, where there are no leads; no recent
13 leads, that is.

14 Q. In other words, they have a homicide or a
15 murder that they know happened, but like you said,
16 there aren't other leads or ways to solve those
17 murders?

18 A. Yes.

19 Q. In terms of being the case agent in this
20 case, what types of investigative techniques did you
21 use to try to infiltrate this gang?

22 A. A lot of them. I guess I would categorize
23 them as traditional investigative techniques, and
24 then some of our more sophisticated techniques. And
25 I can explain both.

1 Q. Let's begin with the traditional. What
2 types of techniques does that involve?

3 A. That's interviews; developing informants;
4 listening to jail calls or prison calls, because
5 those are all recorded; might be doing a trash
6 pull -- when someone puts their trash out on the
7 street, we come back at 2:00 in the morning and,
8 since it's been abandoned, look through it --
9 surveillance, traditional physical surveillance
10 where we follow people around, keep an eye on them.

11 Those are generally the more traditional
12 investigative methods.

13 Q. And as part of your responsibilities in
14 this case, did you ever get involved with probation
15 and parole searches?

16 A. Yes. We did those frequently to help drum
17 up leads and potential cooperators, where we would
18 accompany state and/or federal probation and parole
19 officers out on their compliance visits to suspected
20 SNM members or validated members.

21 Q. What does that type of investigation get
22 you?

23 A. Well, one, because they have a search
24 condition where the probation or parole officers can
25 go in and search through their homes and their

1 phones and their belongings, it allows us to be on
2 site when that's happening. In instances where
3 probation or parole officers find contraband like
4 drugs or weapons, again, we're on site to be there
5 to witness that, and then to take over that
6 investigation, and be on site to conduct interviews.

7 Q. So, for example, if you were to be at a
8 probationer's house, and drugs or firearms are
9 found, are you then able to charge that type of
10 activity?

11 A. Yes, as well as it oftentimes turns up
12 good intelligence. And that's the name of the game,
13 is just to stay one step ahead and continually try
14 to develop intelligence.

15 Q. Now, as you put this information together
16 in this investigation, who were you investigating?

17 A. Well, initially, we were -- simply stated,
18 anyone that was a member or affiliated with the SNM.

19 Q. And who is the SNM?

20 A. The New Mexico Syndicate. We're referring
21 to it as Sindicato de Nuevo Mexico, the SNM.

22 Q. What's the purpose of using some of these
23 traditional techniques as you focus on a certain
24 gang or entity?

25 A. We're behind the curve. At least, I was.

1 I didn't know much about the SNM. And once the
2 threat came out on the Secretary and
3 Mr. Santistevan, we had to go from zero to 100 to
4 stay in front of it, and so we very aggressively
5 tried to learn everything we could about these guys
6 and their associates.

7 And we did that by listening to their
8 phone calls; going into their homes with probation
9 and parole officers; writing search warrants to get
10 in there; and trying to flip as many of the members
11 of their gang as we could to cooperate and help us
12 understand the gang and what moves they were going
13 to make.

14 Q. In terms of techniques -- let me clear
15 something up that came up in opening statements.
16 There was a statement a moment ago that the FBI had
17 wiretaps on each of these defendants. Did that, in
18 fact, happen?

19 A. No. In fact, we didn't have wiretaps on
20 any of these defendants.

21 Q. And when we use the term "adopting cases,"
22 can you tell the members of the jury what we're
23 talking about when we use that term?

24 A. Sure. It sounds derogatory, but I often
25 actually call them like "road kill cases." It's

1 where the FBI wasn't involved in the initial
2 investigation. Perhaps the Las Cruces Police
3 Department pulled someone over, they happened to be
4 a felon, and they had a firearm. And so then the
5 FBI or the ATF adopts that case. We take it; we
6 make a criminal complaint, or we go to the grand
7 jury and seek an indictment; and then we prosecute
8 them in federal court. Those are adoptions.

9 Q. What's the idea or the purpose behind
10 adopting a case and getting someone into the federal
11 system?

12 A. Well, the sentencing is tougher. But
13 personally, for me, as a case agent, it allows me
14 greater interaction with that person. Particularly
15 if I wanted to talk to them, I can work with my
16 counterparts at the U.S. Attorney's Office and their
17 defense attorney to see -- gauge their willingness
18 to cooperate.

19 Q. What happens when you find somebody who is
20 willing to cooperate? What types of things might
21 you have that person do?

22 A. If they're a member of a gang or a
23 criminal organization, and their organization
24 doesn't know they've been arrested, well, then that
25 person is very valuable to us because we can put

1 them back out on the street to buy drugs or guns, or
2 attend meetings to make recordings. And so that's
3 one of the elements.

4 And if that's not possible, then we would
5 also be interested in doing a historical debrief
6 with that person, where we sit down and learn what
7 they know about the gang and other gang members or
8 the organization.

9 Q. Do people always agree to cooperate with
10 you?

11 A. No.

12 Q. Do you find that sometimes there is a code
13 of silence?

14 A. Yes.

15 Q. And is that in general, but also
16 particular to gangs?

17 A. Yes.

18 THE COURT: Mr. Castellano, would this be
19 a good time for us to take our afternoon break?

20 MR. CASTELLANO: Yes, sir.

21 THE COURT: All right. We're going to
22 take our first afternoon break in the Government's
23 presentation of its evidence, and so I want to
24 remind you of a few things that are especially
25 important.

1 Until the trial is completed, you're not
2 to discuss this case with anyone, whether it's
3 members of your family, people involved in the
4 trial, or anyone else, and that includes your fellow
5 jurors.

6 If anyone approaches you and tries to
7 discuss the trial with you, please let me know
8 immediately.

9 Also, you must not read or listen to any
10 news reports of the trial. Don't get on the
11 internet and do any research for purposes of this
12 case.

13 And finally, remember that you must not
14 talk about anything with any person who is involved
15 in the trial, even if it doesn't have anything to do
16 with the trial.

17 If you need to speak with me, simply give
18 a note to one of the court security officers or
19 Ms. Bevel.

20 I probably won't repeat these this
21 afternoon until we take our evening break, but do
22 keep them in mind when we take our next break this
23 afternoon.

24 All right. We'll be in recess for about
25 15 minutes.

1 All rise.

2 (The jury left the courtroom.)

3 THE COURT: All right. We'll be in recess
4 for about 15 minutes.

5 (The Court stood in recess.)

6 THE COURT: All right. It looks like all
7 the defendant are back in the courtroom and everyone
8 has an attorney.

9 Mr. Sindel, it may be a moot point at this
10 point, but Ms. Wild told me that Mr. Swantner never
11 gave her any contact information of either Sandia
12 Labs or SAIC, so she never had any contact
13 information.

14 MR. SINDEL: I heard also he never thanked
15 anyone.

16 THE COURT: We told him to come thank you.

17 MR. SINDEL: Actually, I want him to come
18 work for me.

19 THE COURT: Mr. Castle -- let's get
20 started -- while she's lining up the jury, tell me
21 what you need to discuss.

22 MR. CASTLE: Your Honor, we filed a motion
23 for presentence reports, and the Court ordered it,
24 and the Government had got like six of them to us,
25 only one of which is relevant. The remaining

1 individuals -- we raised this with the Court --
2 they're in the draft phase, because they've all done
3 interviews, done their probation interviews. I
4 believe Probation has pulled the criminal histories,
5 but they just haven't done a formal report. So we
6 were seeking that.

7 I believe at the last court date, the
8 Court had indicated: Well, get me a letter telling
9 me what I -- you know, make a request, and the Court
10 will inquire with Probation.

11 We did that. But then there was some
12 indication that we had to get the position of all
13 the lawyers for all those people. And it's been
14 like -- you think this is herding cats, that's even
15 been worse. I don't even think they have an
16 objection. If you have your client make a statement
17 to Probation, that's a voluntary statement. And if
18 you don't want to, you don't have. So I don't think
19 they have an objection --

20 THE COURT: Let me let you finish here in
21 a minute. Okay.

22 All rise.

23 (The jury entered the courtroom.)

24 THE COURT: All right. Everyone be
25 seated.

1 All right. Before we continue the direct,
2 let me introduce you to Ben Mendelson. He's my law
3 clerk. He was also in Washington the last two days,
4 so he's good and ethical, too. Ben is pretty much a
5 full Texan. He grew up in Austin. His family has
6 been connected with the University of Texas. In
7 fact, the lawyers, they may recognize his family's
8 last name, a very distinguished legal family. And
9 then he went to undergraduate, UT, UT Law School.

10 He's going to leave me at the end of this
11 year and go clerk for Judge Edith Jones on the Fifth
12 Circuit, and then go to Morgan Lewis after that.

13 My other clerk is here, and at some point
14 I'll introduce him, but he's not in the room right
15 at the moment.

16 All right. Mr. Acee, I'll remind you that
17 you're still under oath.

18 Mr. Castellano, if you wish to continue
19 your direct examination of Mr. Acee, you may do so
20 at this time.

21 MR. CASTELLANO: Thank you, Your Honor.

22 THE COURT: Mr. Castellano.

23 BY MR. CASTELLANO:

24 Q. Agent Acee, let me go back to the
25 beginning of the investigation. I forgot to ask you

1 something. So you said you were at PNM, and you had
2 some word of some letters regarding a -- I'll call
3 it a murder conspiracy of Corrections Department
4 personnel. When was that?

5 A. March of 2015.

6 Q. Okay. So before March of 2015, did you
7 know much, if anything, about the SNM Gang?

8 A. I did not.

9 Q. So at this point when you start your
10 investigation, you're dealing with an ongoing murder
11 conspiracy of corrections personnel, and you're
12 trying to learn about the gang at the same time?

13 A. Yes, sir.

14 Q. And during the course of your
15 investigation, then, are you working on preventing
16 that crime and now also looking into the SNM Gang?

17 A. Yes. I'd say that the primary focus was
18 mitigating the threat on the corrections officials.
19 And the secondary objective was targeting the gang,
20 doing the proactive work on the streets. And then
21 later, a third objective would be a historical
22 review of the gang, maybe past crimes that they
23 could still be on the hook for.

24 Q. When you say "past crimes," does that also
25 include what you mentioned earlier, talking to old

1 cold case units and even corrections personnel?

2 A. Yes.

3 Q. Now, you used the term "proactive" in
4 terms of investigation. What would be an example of
5 proactive work that you might -- you did employ in
6 this case?

7 A. So I already talked about the case
8 adoption. We put the word out to all the state and
9 local law enforcement, that if they picked up
10 anybody that was SNM, to give us a call; that we
11 would try to adopt the case. We did, over the
12 course of the investigation, somewhere between 80
13 and 90 controlled buys of either drugs or guns.

14 Q. What is a controlled buy?

15 A. One of the attorneys kind of explained it
16 pretty well earlier, actually. It's a drug buy,
17 like any other, except that law enforcement is
18 controlling it. Simply stated, if we wanted Mr.
19 Castellano to go into a house and buy drugs, I would
20 meet with him and I would search him to make sure he
21 didn't have any drugs on him. I'd take whatever
22 money he had, to set it aside, because we want to
23 make sure we're measuring the deal, if you will,
24 inside. So I don't want any extra drugs purchased.

25 So what I would do is, I would give Mr.

1 Castellano some money. He'd go into the house after
2 being searched. In these cases, we would wire the
3 person up, too, so that there would be a recording
4 of the buy; send them in; they make the buy; they
5 come out; they meet with the agents; we search them
6 again to make sure we're recovering all the drugs
7 and any leftover money.

8 Simply stated, that's a controlled buy,
9 and it's further controlled because we're keeping it
10 under surveillance when it's happening.

11 Q. And do you employ, I would say maybe
12 different techniques or approach it differently if
13 the undercover person is an informant versus a law
14 enforcement officer?

15 A. Yes.

16 Q. What are the differences between using an
17 undercover officer and someone who is working as an
18 informant?

19 A. We don't search the officer, because
20 they're an undercover officer. They do this for a
21 living. And generally, all the other procedures are
22 pretty much the same. We're going to maintain
23 surveillance, and not only to watch the deal, but
24 we're responsible for the person. Whether it's an
25 informant or an undercover agent, we're responsible

1 for their safety while they're doing it, so we don't
2 want them out there alone doing it. So we have
3 different agents or officers assigned to monitor the
4 electronic device, physically monitor the location.

5 Then we have what we call a QRF, or a
6 Quick Reaction Force, that if there is a danger
7 signal, they'll rush in and rescue the informant or
8 the undercover agent.

9 Q. And then what's the purpose -- if someone
10 is an informant, why would you search them before
11 and after the deal?

12 A. Just to ensure that they're an empty
13 vessel. I like to say that they're going into the
14 house empty; and they're coming out either empty
15 again, or loaded with what they bought. But we
16 don't want to make any mistake in that process. So
17 it's to ensure that the informant, going in, doesn't
18 have any drugs; and when they come out, they don't
19 have any extra drugs.

20 Q. And what's the concern -- so in terms of
21 searching someone after they turn the drugs over to
22 you, do you search them to make sure they haven't
23 taken any of the drugs for themselves?

24 A. Yes. And I've had that happen before.
25 Not on this case. But throughout my career over the

1 last 20 years, I've had people pinch it, we call it,
2 maybe stash it in their shoe or something, maybe in
3 another location on their body. So we check them to
4 make sure they didn't do that.

5 Q. When you say "pinch" the dope, what does
6 that mean?

7 A. They'll take a little bit for themselves.
8 And that's FBI's drugs. We bought it. It's our
9 operation. And I am, like most other agents, very
10 possessive of that. One, it's ours. We bought it,
11 and it's going into evidence. And two, we're not
12 buying people drugs and letting them get high off
13 the product we're purchasing.

14 Q. I want to talk to you about some examples
15 from this investigation. Are you familiar with
16 somebody named Mario Montoya?

17 A. I am.

18 Q. And in the undercover capacity, did anyone
19 buy anything from him?

20 A. Yes. We purchased heroin from Mario
21 Montoya. And I was going to say we purchased a
22 firearm, but I don't think we did. We may have,
23 though, going off memory. Again, we did about 90 of
24 these buys. But I did use an informant to make two
25 different heroin purchases from Montoya.

1 Q. And what happened as a result of
2 purchasing firearms or drugs from Mario Montoya?

3 A. I arrested him.

4 Q. And as a result of having arrested him, is
5 he someone who you arrested, and he also agreed to
6 cooperate with law enforcement?

7 A. He did. He wanted an attorney first. He
8 said, "I'll cooperate, but I need to talk to an
9 attorney." So we got him one, and he did cooperate.

10 Q. Eventually, as part of his cooperation,
11 did he help to uncover or further the investigation
12 regarding the threats against the Corrections
13 personnel?

14 A. He did.

15 Q. How did he do that?

16 A. Mario Montoya posed as one of our hitmen
17 on the street to kill the Corrections officials.
18 And he had a recording device, a hidden one, as well
19 as a cellphone that had an FBI wiretap on it so that
20 when he talked to the other conspirators in that
21 murder plot, the calls and conversations were
22 recorded.

23 Q. Was Mario Montoya an SNM Gang member?

24 A. Yes.

25 Q. And can you tell the members of the jury

1 if he purchased drugs from another SNM Gang member
2 once he was cooperating, and maybe even before then,
3 from someone named Chris Garcia?

4 A. He had.

5 Q. And when you mentioned probation and
6 parole searches, I want to ask you about somebody
7 named Robert Lovato. And can you tell the members
8 of the jury how you met Mr. Lovato?

9 A. Mr. Lovato is a member of the SNM. He's
10 one of the individuals we targeted for a state
11 parole and probation search during our -- I believe
12 it was our first-phase operation.

13 We asked the Department of Corrections to
14 search 45 SNM members around the state that were on
15 parole or probation. Mr. Lovato was one of those
16 45, approximately, and he was found to be in
17 possession of a firearm, and so I adopted that case
18 because he was a felon. Excuse me.

19 Q. When you say "adopted," was he charged
20 federally?

21 A. Yes.

22 Q. After he was charged federally, is he also
23 someone who agreed to cooperate with the Government?

24 A. Yes.

25 Q. Now, when you have a prison gang or

1 another entity you're trying to infiltrate, do
2 undercover operations take you as far as you want to
3 go?

4 A. No.

5 Q. And why is that? What other means --
6 first of all, what are the problems with only doing
7 undercover operations, and what other means do you
8 have to get into a gang, for example?

9 A. Well, to the first part of your question,
10 with a prison gang, these are members that are well
11 established. I couldn't have an FBI agent just
12 stroll in to the penitentiary and say he wanted to
13 join the gang. He or she -- well, in this case
14 "he" -- wouldn't have the pedigree; he wouldn't have
15 the background; he wouldn't have grown up in the
16 Boys' Home; done time in county jail with these
17 guys. They wouldn't know him.

18 And even if we could successfully get that
19 far, just becoming a member, the violent acts that
20 you would have to commit to make your bones, earn
21 your bones -- excuse me -- turn in work, we couldn't
22 have an undercover agent stab somebody just to get
23 into a gang, or shoot somebody. We couldn't have
24 them hiding drugs or using drugs. And we couldn't
25 have them not snitching when they did see an

1 assault. As an officer, they would need to report
2 that.

3 So it wouldn't work to infiltrate them
4 with undercover agents.

5 Q. So are those concerns that infiltrating a
6 gang, someone might be required to do those types of
7 things?

8 A. Yes.

9 Q. So once you have kind of your basic
10 traditional operations, what are more sophisticated
11 techniques that you used in this case?

12 A. That's where the wiretaps came in. We did
13 nine of them with 11 extensions. So wiretap is only
14 good for 30 days, then we go back to the Court and
15 ask for an extension. So we extended nine wires a
16 total of 11 times. Some wires we dropped, and then
17 other ones we would utilize.

18 And then we also -- let me back up and
19 add, of those nine, two of them we introduced into
20 the maximum security prison up in Santa Fe, Level 6.
21 It's not unusual to have phones in there. They're,
22 of course, contraband, but it wasn't unusual for SNM
23 members to have them. And one informant in
24 particular had a history of having them.

25 So I thought it was a good idea that --

1 before he was an informant, when he was an SNM
2 member, he had a phone often, so it would make sense
3 that he shows up in prison with a phone. And we had
4 wiretaps on those.

5 We also utilized covert recording devices
6 that were hidden with individuals inside the prison.

7 Q. And what were some of the concerns you had
8 about introducing a cellphone into a prison
9 facility?

10 A. Well, we had to hide it from everybody
11 except the bad guys. I mean, we didn't tell -- we
12 told the highest level of the Corrections Department
13 we were going to do it and sought their approval and
14 concurrence, but we didn't tell the everyday
15 correctional officers that were strolling around.
16 So the people that had the phones had to hide them
17 from, you know, the COs and other inmates that they
18 didn't trust. So they were only revealed to certain
19 members that they trusted and were part of the
20 conspiracy, so that we could capture those phone
21 calls.

22 Again, the priority being to stop this
23 threat to kill these two, and later three, public
24 officials.

25 Q. You used the term "COs" a second ago.

1 What is a CO?

2 A. A correctional officer.

3 Q. When you're talking about these more
4 advanced techniques for this part of the
5 investigation, was that largely focused, as you
6 said, on the threat to the Corrections personnel?

7 A. It was entirely focused on that. They'd
8 sent letters out. And what I failed to mention
9 earlier, in those letters there were deadlines that
10 said: Do it by this date, or you're going to get
11 done.

12 And my concern was, we had to move quickly
13 or they were going to select other guys. I mean, I
14 intercepted those letters through the Department of
15 Corrections, so we knew who they were going to use.
16 Our fear was that they'd use a new group of guys
17 that we wouldn't know about.

18 Q. And then the informant you mentioned
19 earlier, Eric Duran, is he one of the people who had
20 the cellphone?

21 A. He is.

22 Q. And was he able to capture conversations
23 related to that murder conspiracy?

24 A. Yes.

25 Q. And who did he record?

1 A. Anthony Ray Baca, otherwise known as Pup.

2 Q. Who is he?

3 A. The leader of the SNM.

4 Q. He's not in court today. Can you tell the
5 members of the jury whether he was charged and
6 whether he's been to trial so far?

7 A. Yes. We recently finished a six-week
8 trial with Mr. Baca and some other defendants, and
9 he's not charged in this count. He was convicted
10 after a jury trial.

11 Q. He's not part of -- well, in this trial,
12 for example?

13 A. He's not part of this trial.

14 Q. And you mentioned the wiretaps. Did Eric
15 Duran agree to have the phone given to him monitored
16 by the FBI?

17 A. Yes.

18 Q. And did Mario Montoya agree to do the same
19 thing?

20 A. Yes.

21 Q. So going back to the cold case homicides,
22 I want to talk to you a little bit about this case
23 and this trial. As you were investigating the SNM,
24 what types of activities were you looking at?

25 A. Anything that I could charge federally;

1 so, for example, felon firearm -- felon -- excuse
2 me. I'm speaking like an agent. I'm sorry.

3 Felons that are in possession of firearms,
4 that's a federal violation; drug violations; certain
5 robberies; carjackings; crimes of drug crimes; or
6 crimes of violence where a firearm is used; and then
7 a series of racketeering-involved violations.

8 Q. In addition to those, did you -- did that
9 include any witness intimidation?

10 A. Yes, both witness intimidation and
11 retaliating, actually taking the next step, and that
12 is retaliating against a witness.

13 Q. So moving forward from March, did this
14 investigation eventually lead to indictments of
15 certain individuals in December of 2015?

16 A. Yes. That's what I referred to as our
17 Phase 1 takedown. So on December 1st, 2015, we went
18 before the Grand Jury, and arrest warrants were
19 issued. Then on December 3rd, we did a coordinated
20 statewide takedown with multiple FBI SWAT teams and
21 armored vehicles and helicopters. And we had a
22 total of about 500 officers and agents that did
23 simultaneous raids around the state to pick up the
24 first group of people we indicted in our Phase 1
25 operation.

1 Q. What happened with some of the prison
2 facilities during that time?

3 A. We locked down five prison facilities
4 around the state, all of the New Mexico Corrections
5 facilities. All of the SNM members or associates in
6 those facilities were searched, their cells were
7 searched. And we also conducted -- I think I
8 mentioned earlier -- about 45 probation and parole
9 searches, as well.

10 And this was all coordinated in the early
11 hours of December 3, 2015.

12 Q. And so when this happened, did you present
13 the charges to the Grand Jury?

14 A. I'm sorry? Prior to this?

15 Q. Well, leading up to this event, as part of
16 Phase 1, did you present the charges to the Grand
17 Jury?

18 A. Yes.

19 Q. And then as a result of the indictments
20 that were returned, is that what happened with Phase
21 1 in all these searches?

22 A. That's correct.

23 Q. Approximately how many people were
24 arrested in December of 2015?

25 A. We arrested 36 federally. I don't always

1 keep track of the state arrests, but there -- each
2 time we've gone out -- there are three phases to
3 this operation, and each time there is a number of
4 state arrests. But I believe it was 36 federally.

5 Q. So you just arrested a bunch of people in
6 what you call Phase 1. What happened after Phase 2,
7 in terms of the investigation itself?

8 A. Well, we made our court appearances, of
9 course, and we continued our investigation. When we
10 weren't in court, we kept doing drug buys, gun buys.
11 And we now had, among that first group, a few of the
12 defendants tapped out and said they wanted -- after
13 they had attorneys, said they wanted to talk to us.

14 So as that came up, we would do
15 debriefings with those people, and then we'd get
16 back out on the street and keep conducting our
17 investigation.

18 Q. When you used the term "debrief," what
19 does that mean?

20 A. That's where we sit down, a couple of
21 agents, one or more of the attorneys here from the
22 U.S. Attorney's Office, and we sit down with the
23 person we've arrested and their attorney. The
24 attorneys will talk for a few minutes. And then
25 once we get the green light to talk to them, the

1 agents will kind of take over, and we start asking
2 questions.

3 And we're there with a pen and a pad of
4 paper, and we oftentimes start from the beginning:
5 What street gang were you in before the SNM? How
6 did you get in? What did you do to get in? And we
7 go through that process.

8 Q. So is that first session basically -- just
9 generally tell us what you know about the SNM or
10 other criminal activity.

11 A. Yes. And I'll even say sometimes we don't
12 even get that far in the first session, because the
13 attorneys are doing their thing and working stuff
14 out, and so it's just kind of a meet-and-greet. And
15 the actual, what I'll call the debriefing, occurs
16 maybe during the second meeting. Oftentimes, it's
17 during the first; sometimes it's not.

18 Q. And then, as a result, do you typically
19 write a report summarizing the contents of the
20 meeting?

21 A. Yes.

22 Q. And as time goes on and you get to know
23 the person and maybe what they were involved in, do
24 you then later focus on certain crimes or certain
25 people, for example?

1 A. Yes.

2 Q. So you mentioned Phase 1. Does that mean
3 eventually you reached a Phase 2?

4 A. Yes. In April of 2016, just a few months
5 later, again we did a presentation to the Grand
6 Jury, and we had another series of indictments or
7 arrest warrants and search warrants. And just like
8 the operation I described earlier, we sought out
9 with several FBI SWAT teams around the state, and in
10 some cases in other states, and picked up the
11 individuals that we had arrest warrants for. We
12 also locked down the facilities and conducted the
13 parole searches that I explained before.

14 Q. And does this also include another
15 indictment against another group of people who were
16 alleged SNM Gang members?

17 A. Yes.

18 Q. And is that what was called the RICO
19 indictment?

20 A. The RICO conspiracy indictment, yes.

21 Q. If you remember, what does RICO stand for?

22 A. It's the Racketeering Influenced and
23 Corrupt Organizations Act.

24 Q. As a result of the investigation, then,
25 approximately how many murders have been charged?

1 A. I was thinking about that when I came up
2 here. I think 11 have been charged. We've
3 investigated dozens, but I think we've charged 11 at
4 this point.

5 Q. And are these each allegations against SNM
6 members or associates?

7 A. Yes.

8 Q. And do some of these charges include the
9 murder of Javier Molina?

10 A. Yes.

11 Q. As well as the murders alleged in this
12 case?

13 A. That's correct.

14 Q. Does it include the murder of someone
15 named Shane Dix?

16 A. Yes.

17 Q. And Michael Giron?

18 A. Yes.

19 Q. And Sammy Chavez?

20 A. Yes.

21 Q. And someone else named Estevan Ortega?

22 A. Yes.

23 Q. And what would you say is the most
24 recently charged murder in terms of the time?

25 A. The Ortega one out of Silver City that

1 involved Steven Morales.

2 Q. And has that been charged in recent
3 months?

4 A. Yes.

5 Q. Even now, are there still kind of aspects
6 of this investigation that are ongoing?

7 A. Absolutely.

8 Q. Earlier -- going back to the cold case
9 homicides, about how many of these murders that you
10 picked up were considered cold case homicides?

11 A. We're investigating many cold case
12 homicides. I believe we've solved and charged six
13 cold case homicides so far.

14 Q. You mentioned the Phase 2. Was there also
15 what you would call a Phase 3?

16 A. There was.

17 Q. What was the purpose of Phase 3 of the
18 investigation?

19 A. Phase 3 was to address several threats
20 that had been made toward the witnesses and the
21 informants in our investigation. Because at this
22 point, this takes place -- Phase 3 is in September
23 of 2016. So we're nine to 10 months into arresting
24 people. And now there are some threats of witnesses
25 in our case and informants being intimidated. So we

1 initiated a Phase 3 takedown, if you will, to
2 address those threats.

3 Q. And what types of activities were involved
4 with Phase 3?

5 A. I had prepared 12 federal search warrants,
6 so we served those, all of which were generally in
7 the Albuquerque metropolitan area, if I remember
8 correctly.

9 We also had an inmate, an SNM inmate, in
10 Beaumont, Texas, searched at a Federal Bureau of
11 Prisons, as well as some targeted probation and
12 parolees that had search clauses both in the feds
13 and in the state were searched. So I think, all
14 together, we did 18 searches.

15 Q. You mentioned a federal inmate in
16 Beaumont, Texas. Who was that person?

17 A. Frankie Gallegos. He goes by Kunte or
18 Frankie G.

19 Q. Is he related to any of the defendants
20 here in court?

21 A. Yes.

22 Q. Who is he related to?

23 A. Andrew Gallegos and Joe Gallegos.

24 Q. So is it fair to say that all three of
25 them are brothers?

1 A. Yes.

2 Q. What did you find in the search of Frankie
3 Gallegos' cell? And when you say Beaumont, Texas,
4 was that a state or a federal facility?

5 A. It's a federal prison in Beaumont.

6 Q. What did you find as a result of that
7 search?

8 A. Frankie Gallegos had an address book, on
9 the cover of which he had the SNM plaque that I'll
10 describe, the Zia symbol with the S in the middle.
11 And he also had -- I believe it was on the inside
12 cover, or it might have been the back cover -- ESL,
13 East Side Locos, Belen.

14 MR. BENJAMIN: Your Honor, at this point
15 in time, Defendant Joe Gallegos would ask for a
16 limiting instruction as to what was searched and
17 found in his brother's cell in prison.

18 THE COURT: All right. Well, these are
19 statements, I guess, that can only be used against
20 one of the defendants. So I'll not allow it to be
21 used against anyone else.

22 MR. BENJAMIN: Your Honor, he's not
23 charged in this.

24 THE COURT: Well, I guess -- what would
25 the limiting instruction be, then?

1 MR. BENJAMIN: That this evidence -- I'm
2 requesting that this evidence not be used or
3 considered against Joe Gallegos. What a family
4 member does is not relevant to what another family
5 member does unless there is some other connection.

6 THE COURT: Well, why don't you approach.
7 I guess it seems to me the objection needs to either
8 be broader or nonexistent. But I'm not
9 understanding.

10 MR. BENJAMIN: Objection; relevance, Your
11 Honor.

12 THE COURT: Well, why don't you approach
13 on that, then.

14 (The following proceedings were held at
15 the bench.)

16 THE COURT: I don't know what the limiting
17 instruction would be.

18 MR. BENJAMIN: I guess --

19 THE COURT: What is this being introduced
20 for, Mr. Castellano?

21 MR. CASTELLANO: This would be tied up in
22 other witnesses who will say that the Gallegos
23 brothers are SNM members, as well as East Side
24 Locos. And Frankie Gallegos is a leader in the SNM
25 in the federal system. So I'm not going farther

1 with him, but this will tie in to other testimony
2 from other witnesses.

3 MR. BENJAMIN: Your Honor, I'd object,
4 because that testimony doesn't exist. It's going to
5 be: I believe they're SNM. But all of this in
6 relation to the pretrial hearing, all of this
7 testimony is, for lack of a better term, guilt by
8 family association. Joe Gallegos is not and he has
9 not been a validated SNM Gang member. He's an East
10 Side Loco. Whether they want to tie it up with
11 other testimony, but the search is not relevant.

12 THE COURT: What is the tie-up down the
13 road? What is it that you're going to want to tie
14 it up --

15 MR. CASTELLANO: The tie-up is that each
16 of the brothers is an SNM Gang member and East Side
17 Locos Gang member, and that the brother is a leader.

18 THE COURT: Which brother?

19 MR. CASTELLANO: Frankie Gallegos, who
20 Agent Acee identified, is also Frankie G and Kunte.
21 There is a difference. We have to distinguish
22 between a validated SNM member and an SNM Gang
23 member. Validation comes from the Corrections
24 Department. So you could be right about someone
25 isn't validated in the Corrections Department, but

1 it doesn't mean someone is not an SNM Gang member.

2 MR. BENJAMIN: Your Honor --

3 THE COURT: Well, here's the problem I
4 have: I'm a little reluctant to just -- it's a
5 difficult enough task for the jury to start trying
6 to try each one of these defendants individually.
7 Just because another brother, a third brother, is a
8 member of the gang, I don't think that is going to
9 make it more likely or not. If it is, it's probably
10 for an improper reason, just association in fact
11 that he's a gang member.

12 So I think that probably we ought to just
13 keep Mr. Frankie Gallegos out unless he's got some
14 connection to this crime, which I don't think I've
15 heard about so far.

16 MR. CASTELLANO: Right. Various witnesses
17 will say they have also served time with Frankie
18 Gallegos and know him to be an SNM Gang member.

19 THE COURT: I guess that's my whole
20 problem. We've got to try these guys individually.
21 To start dragging another family member in, I think
22 the inference that you want the jury to draw is that
23 because he's got a third brother that's an SNM Gang
24 member, these two are gang members. And I don't
25 think we want the jury to make that -- I think we

1 want to try these people individually.

2 So I'm going to sustain the objection, and
3 I'm going to tell the jury to ignore the testimony
4 about Frank Gallegos. If, down the road, you've got
5 something more that we need to bring Frank Gallegos
6 in, then we can do that.

7 MR. CASTELLANO: Because the familial
8 relationship will make them not only members, but
9 also, at a minimum, associates of the SNM, which is
10 also something that --

11 THE COURT: Well, if you need to re-call
12 Acee, we can re-call him down the road. But right
13 now, it's just looking like, because Frank Gallegos
14 is a gang member, SNM Gang member, that these two
15 men are. And I think we probably don't want that
16 leap.

17 MR. BENJAMIN: Your Honor, I would just
18 ask that we could approach or handle that prior to
19 having the testimony come up in front of the jury --
20 motion in limine, for lack of a better term.

21 THE COURT: The next time we have anything
22 on Frank Gallegos, let's approach.

23 MR. BENJAMIN: Thank you, Your Honor.

24 MS. TORRACO: May I address the Court? I
25 also had an objection. I would ask for a limiting

1 instruction at this point about what it said on the
2 book.

3 THE COURT: I'm just going to strike that
4 testimony.

5 MS. TORRACO: And they're to disregard it.
6 Thank you.

7 (The following proceedings were held in
8 open court.)

9 THE COURT: Ladies and gentlemen, I'm
10 going to instruct you just to disregard the
11 testimony about Frank Gallegos. So we'll just
12 strike that. Whatever is on the book, or any of
13 that testimony, we'll just strike that, and you'll
14 not consider it in any way in your deliberations.

15 All right. Mr. Castellano.

16 BY MR. CASTELLANO:

17 Q. Agent Acee, following Phase 3, I want to
18 ask you if you engaged in what are called reversal
19 operations?

20 A. Yes.

21 Q. What is a reversal operation?

22 A. Where the Government -- or in this case,
23 the FBI -- is providing a weapon to the bad guy.

24 Q. Why would you do that?

25 A. Well, in this case, they were looking for

1 a gun to kill witnesses. And we wanted it to be our
2 gun so we could be there and arrest them when they
3 took possession of it.

4 Q. Can you describe for the members of the
5 jury how these operations work, for example?

6 A. Once we heard through one of our
7 informants on the streets that an SNM member was
8 looking for a gun to kill somebody, I would instruct
9 the informant to tell that person that the informant
10 had a gun for him. I used FBI guns that had
11 shortened firing pins, so they functioned, but they
12 didn't fire.

13 I wrote anticipatory search warrants for
14 the residence or the location where we would do that
15 deal. And then I had an FBI SWAT team in a van down
16 the street. So as soon as the person took
17 possession of the firearm, we could execute the
18 search warrant, send the SWAT team in and arrest
19 them, and recover our gun.

20 Q. Now, you mentioned a few things in there.
21 The first is a shortened firing pin. So for those
22 who are less than familiar with firearms, what does
23 it mean to shorten the firing pin?

24 A. The firing pin needs to strike the primer
25 of the cartridge or the bullet in order for the gun

1 to work. If we tamper with that process, and the
2 firing pin never strikes the primer, the gun can't
3 be fired. So by shortening that just a
4 millimeter -- I don't do that. We have some folks
5 at Quantico, at the Academy, in our firearms unit
6 that do that, and they test it before they send it
7 out. So that's what that process looks like.

8 Q. So in layman's terms, does the firing pin
9 basically strike the back of the bullet, causing it
10 to fire out of the weapon?

11 A. Yes.

12 Q. And with a shortened firing pin, then, is
13 the weapon able to fire a bullet or a round of
14 ammunition?

15 A. It is not. It looks like it might, but
16 functionally it does not. So if you were to inspect
17 it, it looks good, but it's just a hair short.

18 Q. So, for example, if an informant went to
19 deliver the firearm, and the person, the suspect,
20 put a bullet or a magazine full of bullets or
21 ammunition in it, that person couldn't fire the
22 weapon?

23 A. That's correct. And we don't supply the
24 ammunition. That's a bad idea anyway. So just the
25 gun. But you're correct.

1 Q. And then when you use the term
2 "anticipatory search warrant," how is that different
3 from what we'll just call a regular search warrant?

4 A. Simply stated, that's a search warrant
5 where I'm asking the Court's permission to execute
6 the warrant if a certain triggering event happens.
7 And in this case, the triggering event is the person
8 willingly takes possession of that firearm. That's
9 the triggering event that allows that search warrant
10 now to be executed.

11 Q. And even though the firearm couldn't fire
12 ammunition, what did you do to keep the firearm from
13 hitting the streets?

14 A. I had the SWAT team down the street with
15 the search warrant. And so as soon as the
16 undercover agent -- because in some cases we use an
17 undercover agent -- or the informant walked out of
18 the house, the team was literally pulling up and
19 executing the warrant.

20 Q. So about how quickly after the firearm was
21 delivered was it then recovered through the search
22 warrants?

23 A. We did a series of these. The quickest
24 was within less than a minute, because the team was
25 nearby. In some cases, it took a little over a

1 minute. But it was a priority, and the guys got
2 there quickly.

3 Q. I'm kind of focusing on informants; you've
4 talked about them a little bit. But I want to ask
5 you about the letters CHS or CI or CS. What are we
6 normally talking about when we use letters like
7 that?

8 A. They're all the same thing. Most police
9 departments call them CIs, confidential informants.
10 The FBI, being the FBI, has their own term for it.
11 It's CHS for confidential human source. We may have
12 confidential electronic sources, so that
13 distinguishes a human source.

14 Q. And what type of -- I'll just call them
15 informants for now. But what kind of informants
16 might you use in an operation?

17 A. Well, we might use some that are
18 professional informants, whereas, they're similar --
19 I would describe them as similar to an undercover
20 agent, but they're not actually an employee of the
21 bureau. They kind of have a knack for being an
22 informant, and they've perhaps worked in different
23 FBI field offices around the country.

24 In this case, we didn't use any
25 professional informants. We have cooperating

1 defendants where a person has been charged, and they
2 agree to cooperate. And then we just have
3 informants that don't have any charges. I wouldn't
4 call them professional, but they have access and
5 ability to get into a particular organization, so
6 we'll utilize them.

7 Q. And when it comes to recruitment, how do
8 you recruit informants, and what are the various
9 motivations they might have?

10 A. Recruitment, the FBI would probably say,
11 is almost a form of art at times. But in most
12 cases, it's a person who has access and has agreed
13 to cooperate with the FBI, either because they have
14 pending charges; they're looking to avoid charges;
15 they might do it for monetary gain; and once in a
16 while, depending on what type of violations we work,
17 we even have informants that just volunteer to do it
18 because they believe in it, like for patriotic or
19 idealistic reasons.

20 Q. What are typically your objectives when
21 you recruit and employ informants?

22 A. I like to use them as little as possible.
23 That being said, there are some organizations that
24 we're not going to penetrate, we're not going to
25 infiltrate without them, because we just can't. And

1 so in those cases, we have to use them. But me,
2 personally, I prefer to use undercover agents or
3 other means. But informants, I have a lot of them,
4 and I, over the last 20 years, use lots of them.

5 Q. Are you able to use them to collect
6 intelligence?

7 A. Yes.

8 Q. So, for example, when we're talking now
9 about the SNM Gang, are you then able to learn
10 historical things about the gang?

11 A. I am. Particularly if the informant is a
12 member of the gang, and they've been around the gang
13 for a while, they possess a lot of intelligence and
14 historical information.

15 Q. You also use some of these informants to
16 try to solve the cold case murders you've been
17 talking about?

18 A. Yes.

19 Q. Is the jury in this case going to hear
20 from cooperating defendants? Do you expect that?

21 A. Yes.

22 Q. What is largely their motivation?

23 MR. CASTLE: I'm going to object, Your
24 Honor. I think that calls for speculation and
25 should be a proper inquiry of those particular

1 informants.

2 THE COURT: I tend to agree. I think
3 we're going to get into that a lot with each one of
4 the individuals. So sustained.

5 MR. CASTELLANO: I'll rephrase, Your
6 Honor.

7 BY MR. CASTELLANO:

8 Q. Can you tell the members of the jury
9 whether a cooperating defendant is able to have his
10 sentence reduced through the court system?

11 A. Yes. That's up to the Judge.

12 Q. For some of the people who have decided to
13 plead guilty and cooperate, were some of them
14 released from custody, and have others remained in
15 jail?

16 A. Yes, both.

17 Q. And for some of those released from
18 custody, did some of those violate and return to
19 jail?

20 A. Yes.

21 Q. For some of those released from custody at
22 some point in time, were they under the FBI's
23 supervision for purposes of operations?

24 A. Some were.

25 Q. And if they complied with the rules, were

1 they able to stay out?

2 A. Yes.

3 Q. If they broke the rules, did they get
4 thrown back in jail?

5 A. I arrested them and dropped them off at
6 jail.

7 Q. Now, in terms of trying to stay ahead of
8 the intelligence and the information in this case,
9 what do you do with SNM members or associates who
10 are now coming out of the federal or state systems?

11 A. I'm usually at their parole office with
12 their parole officer for their first meeting so that
13 I can be introduced and talk to them, both guys
14 coming out of federal prison or state prison.

15 Q. And what's the purpose of doing that?

16 A. Let them know that we're investigating and
17 arresting the SNM; that we'll have our eye on them.
18 And in some cases, it's worked out well because
19 those individuals want to be done with the gang, and
20 they agree to talk to me. And so I learn more about
21 the gang, and I learn more about old cases and cold
22 cases and the history of the gang.

23 Q. When you talked about prison searches,
24 have you accompanied Corrections officials to aid in
25 those searches in the prison facilities?

1 A. I have.

2 Q. How recently have you done one of those
3 types of operations?

4 A. I did one last week.

5 Q. And what did you find last week?

6 A. Myself and 17 other FBI agents went up to
7 the penitentiary and searched the two SNM pods.
8 There is only two remaining. We found weapons,
9 drugs, coded letters or kites, fishing lines, and
10 discovery materials from this case.

11 Q. And what kind of concerns did that give
12 you, to find discovery from this case in a prison
13 facility?

14 A. A couple. In this case in particular, the
15 defendants don't have paperwork; they have tablets
16 so that we can avoid paperwork going into the
17 prisons. The reasons we avoid paperwork going into
18 the prisons is, within the SNM, as in other prison
19 gangs, paperwork is the proof. So if someone is
20 telling, if there is an informant, you need proof
21 that they're informing or telling. And that's what
22 the paperwork serves. And then that is the proof
23 that's needed to hit that person.

24 Q. Was that a concern to you, then, that you
25 found physical paperwork related to this case?

1 A. It is. Because, as I said, there
2 shouldn't have been any paperwork floating around.

3 Q. Are those for inmates who have already
4 been charged in this case?

5 A. That's correct.

6 Q. Now, you used the term "kites." Can you
7 please define that term for the members of the jury
8 as you understand it?

9 A. Usually a piece of paper with a message on
10 it, and like you would fly a kite, you send that to
11 somebody.

12 Q. You also used the term "fishing line."
13 What would someone have fishing line for in prison,
14 using that term?

15 A. It's a line of string with a hook on it.
16 And the inmates use it to pass paperwork or
17 contraband or anything from cell door to cell door.
18 So they'll hook fishing lines, and when they're
19 hooked together they'll have, say, a note or
20 something tied to the end. And the other inmate in
21 the other cell can pull it into his cell. And
22 that's how they pass items. I won't just say
23 contraband, but items between different prison
24 cells.

25 Q. Has the use of cooperators in this case

1 been beneficial to your investigation?

2 A. Yes.

3 Q. Why is that?

4 A. Well, without cooperators, we would not
5 otherwise have been able to infiltrate the gang.

6 Q. So, in other words, there is a certain
7 amount of information you can get from law
8 enforcement personnel or Corrections officials, but
9 can they fill in all the blanks?

10 A. No. It's a secret organization. I mean,
11 the blanks are huge ones. We have to have insiders
12 to get that information.

13 Q. Another example would be -- you talked
14 about the use of undercover officers, when you can
15 use them. Would you have been able to introduce an
16 undercover officer into the prison system posing as
17 an inmate?

18 A. We could have, but I wouldn't.

19 Q. Why not?

20 A. It's unlikely to succeed for the reasons I
21 explained earlier. And it's also too dangerous.

22 Q. Why would you consider it dangerous?

23 A. We don't control the prison environment,
24 and we can't readily respond. I talked about having
25 SWAT teams in vans nearby. We can't do that in a

1 prison. And to leave an agent locked up like that,
2 where we don't have a quick response, and the
3 demands that would -- that could be put on that
4 agent, particularly if they're trying to infiltrate
5 a gang, would be -- just be too dangerous to try.

6 Q. In this case, when you sign people up to
7 be confidential human sources, can you tell the
8 members of the jury whether you paid them money?

9 A. Yes, I did.

10 Q. And did those people who you signed up as
11 confidential human sources provide information to
12 the FBI?

13 A. Yes.

14 Q. And consequently, or subsequently, did you
15 pay them compensation?

16 A. Yes.

17 Q. Including even some of the people who will
18 be witnesses in this case?

19 A. Yes.

20 Q. About, on average, how much would you pay
21 each individual?

22 A. As an average, between \$50 a month. Some
23 less; some a little bit more.

24 Q. What types of things might \$50 a month buy
25 a person in prison?

1 A. Things at the commissary like chips,
2 drinks, pencils -- a lot of them like to draw --
3 paper, stamps, envelopes, and additional phone
4 calls.

5 Q. So you pay them for information -- it's
6 been suggested by the opening statements that
7 they're being paid for their testimony. Are you
8 paying any informant for testimony in court?

9 A. No, not in any way. We don't pay people
10 to testify.

11 Q. And have there been people who were
12 cooperative with you who have broken the rules?

13 A. Yes, most of them.

14 Q. And what was the consequence of them
15 breaking the rules?

16 A. I closed them as informants. And if I
17 could arrest them, I did.

18 Q. So once that happened, did they lose the
19 benefit of receiving even \$50 a month?

20 A. Yes.

21 Q. Can you tell the members of the jury
22 whether at least a few of them were closed as
23 informants for violating the contact rules at the
24 prison where they were located?

25 A. Yes, four men were.

1 Q. And was that information discovered and
2 was it turned over to the defense attorneys?

3 A. Yes.

4 Q. There is also an indication, at least in
5 opening, that the jury would hear about some of the
6 defendants receiving tablets, or the cooperators,
7 and them tampering with those tablets. Did that
8 also happen?

9 A. Yes, it did.

10 Q. And after they tampered with their
11 tablets, were they closed as confidential human
12 sources?

13 A. Yes.

14 Q. And so to separate the two things out,
15 even though they're closed as sources, if they've
16 entered into agreement with the Government, do you
17 expect for them to still testify pursuant to their
18 agreement with the Government?

19 A. Yes.

20 Q. Approximately how many SNM Gang members or
21 associates have you interviewed through the course
22 of this investigation?

23 A. A conservative estimate is maybe 75 to
24 100.

25 Q. And in dealing with them, can you tell the

1 members of the jury the significance of respect to
2 them and interacting with them?

3 MR. BENJAMIN: Objection, Your Honor;
4 speculation and overbroad.

5 THE COURT: Why don't you narrow it a
6 little bit?

7 MR. CASTELLANO: Sure. I can rephrase.

8 BY MR. CASTELLANO:

9 Q. Has it been your experience that respect
10 is a big deal to SNM Gang members?

11 A. Yes.

12 Q. When you deal with them, have you dealt
13 with them in a respectful manner?

14 A. Both cooperators and non-cooperators, I
15 try to always be respectful.

16 Q. Why?

17 A. You don't get anywhere with them if you're
18 not. It shuts down everything right away. And it's
19 professional. I should anyway. But I take extra
20 measures to make sure I'm showing that wherever I
21 can.

22 Q. Going back to the operations of Phases 1
23 and 2, did you make arrangements to have photographs
24 taken of the people that were arrested and charged?

25 A. I did. I had prepared search warrants so

1 that the FBI could physically not only photograph
2 them, but could physically inspect their bodies for
3 tattoos and collect DNA swabs.

4 Q. Why was that important to you?

5 A. It's just part of the investigation. And
6 where I can get a search warrant, I wanted to. I
7 guess we could have photographed them anyway. But I
8 thought it's just better to be able to serve them
9 with a search warrant to be able to do it.

10 Q. When it comes to tattoos, has it been your
11 experience that some members may have SNM tattoos
12 and some don't?

13 A. Yes.

14 Q. So can you make a blanket statement that
15 all SNM members have tattoos?

16 A. No.

17 Q. Can you make a blanket statement that no
18 SNM members have tattoos?

19 A. That also is not true.

20 Q. At this point, Agent Acee, I'm going to
21 show you a stack of photographs. I'll show them to
22 you first, and I'll ask you if they're a fair and
23 accurate depiction of what you've seen on various
24 occasions that photographs have been taken?

25 MR. CASTELLANO: May I approach the

1 witness, Your Honor?

2 THE COURT: You may.

3 Q. Agent, I'm going to show you Government's
4 Exhibit 84. I'm going to show it to counsel.

5 MR. CASTLE: We have no objection, Your
6 Honor.

7 THE COURT: All right. Any other
8 defendant have any objection? Not hearing any, are
9 you moving its admission, Mr. Castellano?

10 MR. CASTELLANO: Yes, sir. And this is
11 Exhibit 84.

12 THE COURT: Without objection,
13 Government's Exhibit 84 will be admitted into
14 evidence.

15 (Government's Exhibit 84 admitted.)

16 MR. CASTELLANO: May I publish that to the
17 jury at this time, Your Honor?

18 THE COURT: You may.

19 BY MR. CASTELLANO:

20 Q. Agent Acee, this is Exhibit 84. Is this a
21 picture of Billy Garcia on the date of his arrest?

22 A. Yes.

23 Q. So the date that's on the sheet is
24 December 3, 2015. Is that the date that he was
25 arrested?

1 A. It is.

2 Q. And can you tell the members of the jury
3 whether the case was presented to the Grand Jury and
4 an indictment returned shortly before this date?

5 A. Yes. I believe it was presented to the
6 Grand Jury on the 1st, and I think we got all the
7 paperwork back from the Grand Jury on the 2nd, and
8 we went out and picked everybody up on the 3rd.

9 Q. After the case was indicted, did you get
10 arrest warrants for each of these people?

11 A. Search and arrest warrants, yes.

12 Q. And for Billy Garcia, we don't have any
13 picture here of any tattoos. What would you say
14 about any tattoos related to Billy Garcia?

15 A. I don't believe he has any. I think he
16 just had some scars, if I remember correctly.

17 Q. And for Billy Garcia, do you see him in
18 the courtroom today?

19 A. I do.

20 Q. Will you please point him out and identify
21 him for us?

22 A. He's seated in the first -- the row next
23 to Mr. Cooper. He has a dark-colored suit on and a
24 white shirt, with a blue-ish tie.

25 MR. CASTELLANO: Let the record reflect

1 that the witness has identified Defendant Billy
2 Garcia.

3 THE COURT: The record will so reflect.

4 Q. On December 3, 2015, do you recall if he
5 was charged in Counts 1 and 2 of the murders of Mr.
6 Castillo and Mr. Garza?

7 A. He was.

8 MR. CASTELLANO: Your Honor, at this time,
9 I move the admission of Government's Exhibit 88 and
10 89.

11 THE COURT: Any objection?

12 MR. LAHANN: No objection.

13 THE COURT: All right. Not hearing any
14 other objection, Government's Exhibits 88 and 89
15 will be admitted into evidence.

16 (Government's Exhibits 88 and 89
17 admitted.)

18 BY MR. CASTELLANO:

19 Q. Turning first to Exhibit 88, is this also
20 a picture of Mr. Patterson when he was arrested on
21 December 3rd of 2015?

22 A. Yes.

23 Q. Was he charged in his murder count on
24 that -- well, a few days before that date?

25 A. Yes.

1 Q. And turning to Government's Exhibit 89, it
2 looks like there is a tattoo on his stomach. Do you
3 recognize that tattoo?

4 A. I do.

5 Q. What does it say?

6 A. "China Town."

7 Q. And what do you associate that name with?

8 A. It's a street gang in Silver City, New
9 Mexico.

10 Q. And if you recall, do you recall where Mr.
11 Patterson was arrested?

12 A. He was arrested outside Silver City, New
13 Mexico. He may have been in the city limits. I
14 don't recall. It was a marshal's team that went
15 down and picked him up.

16 Q. At that time, was he charged with the
17 murder that's currently pending before this jury?

18 A. Yes.

19 MR. CASTELLANO: At this time, I'd move
20 the admission of Government's Exhibits 93, 94, 858,
21 and 859.

22 THE COURT: Any objection from defendants?

23 MR. GRANBERG: No objection.

24 THE COURT: All right. Not hearing any
25 objections, Government's Exhibits 93, 94, and 858

1 will be admitted into evidence.

2 (Government's Exhibits 93, 94, and 858
3 admitted.)

4 MR. CASTELLANO: Did you also get 859?

5 THE COURT: I did not. Any objection to
6 859?

7 MR. GRANBERG: No objection.

8 THE COURT: Not hearing any objection,
9 Government's Exhibit 859 also will be admitted into
10 evidence.

11 (Government's Exhibit 859 admitted.)

12 BY MR. CASTELLANO:

13 Q. Agent Acee, I'm going to show you what's
14 been admitted as Government's Exhibit 93. Before I
15 turn to that, I showed you a picture of Allen
16 Patterson in court today?

17 A. Yes.

18 Q. Please point him out.

19 A. Mr. Patterson is in the second row,
20 between Mr. Lahann and Mr. Shattuck. He's wearing a
21 dark suit with a blue shirt, gray tie.

22 MR. CASTELLANO: Let the record reflect
23 the witness has identified the Defendant Allen
24 Patterson.

25 THE COURT: The record will so reflect.

1 Q. Now, turning to Exhibit 93, who is this?

2 A. Christopher Chavez.

3 Q. And since the date also says December 3,
4 2015, is this the date he was arrested?

5 A. Yes, sir.

6 Q. And arrested for the charges pending in
7 this case?

8 A. Yes.

9 Q. Turning to Exhibit 94, that is a picture
10 of some of his tattoos?

11 A. Yes.

12 Q. Let me turn your attention now to Exhibit
13 858, and if you can describe what we're looking at
14 in this photograph, please?

15 A. Looking at the back of Mr. Chavez's neck,
16 it's an outline of the state of New Mexico. The
17 word in the center, the most dominant word there is
18 "Burque," short for Albuquerque. The upper
19 left-hand corner, there is an "N," the lower
20 right-hand corner of the state outline is "M," for
21 New Mexico. And you'll notice behind the word
22 "Burque," there is a large "S."

23 Q. In other words, do you see in this
24 photograph -- you can touch your screen. Can you
25 show us the letters "SNM" on there, please?

1 A. I'll outline the "S," I'll circle the "N,"
2 and the "M."

3 Q. Turning your attention to Exhibit 859.
4 I'll see if I can clear the screen. If you can, can
5 you tell us what is shown in this exhibit?

6 A. This is -- I believe this is Mr. Chavez's
7 left wrist, and it says "Barelas."

8 Q. What significance does the word "Barelas"
9 have to you?

10 A. A couple. But that's a street gang in
11 Albuquerque in the Barelas neighborhood. A lot of
12 the -- a lot of SNM members are from there.

13 Q. And you mentioned the words "street gang."
14 And is the SNM a prison gang?

15 A. Yes.

16 Q. What's the difference between a street
17 gang and a prison gang?

18 A. Street gangs are in our communities. They
19 claim geographic areas on the street or
20 neighborhood. Prison gangs are comprised of street
21 gang members, but they control the jails and prisons
22 where a lot of street gang members end up.

23 Q. So from your experience in this case, is
24 it possible for a person to be a member of a street
25 gang, and then a member of a prison gang?

1 A. Yes. It would be a struggle to think that
2 someone who was a member of a prison gang hadn't
3 been a member of a street gang. It usually works
4 that way.

5 Q. In a second I'm going to show you here
6 Government's Exhibit 101, but let me show it to
7 defense counsel first.

8 MR. CASTELLANO: At this time, I move the
9 admission of Government's Exhibit 101.

10 THE COURT: Any objection from the
11 defendants? Not hearing any objection, Government's
12 Exhibit 101 will be admitted into evidence.

13 (Government's Exhibit 101 admitted.)

14 BY MR. CASTELLANO:

15 Q. Agent Acee, I'm going to show you Exhibit
16 101. Who is this person?

17 A. Leonard Lujan.

18 Q. And since he's there in a photograph of
19 December 3, 2015, can you tell the members of the
20 jury whether he was also charged with murder?

21 A. He was charged and arrested.

22 Q. And is he the person referred to as a
23 person who has given a statement in 2007?

24 A. Yes.

25 Q. And was he charged in relation to the

1 murders that were charged in this case initially?

2 A. Yes.

3 Q. And has he pled guilty and agreed to
4 cooperate in this case?

5 A. Yes.

6 MR. CASTELLANO: Your Honor, at this time
7 I move the admission of Government's Exhibits 109
8 and 110.

9 THE COURT: Any objection from the
10 defendants? Not hearing any objection, Government's
11 Exhibits 109 and 110 will be admitted into evidence.

12 (Government's Exhibits 109 and 110
13 admitted.)

14 BY MR. CASTELLANO:

15 Q. Agent Acee, let me begin with Government's
16 Exhibit 110. Who is this person?

17 A. Eugene Martinez.

18 Q. And same question. Was he arrested on
19 December 3, 2015?

20 A. Yes.

21 Q. And did he plead guilty to the Garza
22 murder and is he -- do you expect him to cooperate
23 in this case?

24 A. Yes to both.

25 Q. Showing you Government's Exhibit 109,

1 looks like a tattoo on the back of his neck. What
2 is that?

3 A. That's his nickname, Huero, or Little
4 Huero.

5 Q. As we discussed before we picked a jury in
6 this case, is he one of those people who has a
7 nickname in this case?

8 A. Yes.

9 Q. And has it been your experience that from
10 time to time, people with nicknames are tattooed on
11 their bodies?

12 A. Yes.

13 MR. BENJAMIN: No objection to 181, Your
14 Honor.

15 THE COURT: And you're moving its
16 admission, Mr. Castellano?

17 MR. CASTELLANO: Yes, Your Honor.

18 THE COURT: Any objection from anyone
19 else? Not hearing any, Government's Exhibit 181
20 will be admitted into evidence.

21 (Government's Exhibit 181 admitted.)

22 BY MR. CASTELLANO:

23 Q. Agent Acee, I'll show you that exhibit at
24 this point. Who is this person?

25 A. Joe Gallegos.

1 Q. Do you see him in the courtroom today?

2 A. I do.

3 Q. Can you point him out, please, or describe
4 what he's wearing?

5 A. He's the only gentleman standing up.

6 MR. SINDEL: Good job.

7 Q. That works. Let the record reflect --

8 A. Thank you.

9 Q. -- that the defendant stood and was
10 identified by Agent Acee?

11 THE COURT: The record will so reflect.

12 Q. We don't have any pictures here of
13 tattoos. Are you aware of any tattoos for Mr.
14 Gallegos?

15 A. No.

16 Q. And if you don't recall, that's okay.

17 A. I don't, off the top of my head.

18 Q. And in this case, was he charged with the
19 Castillo murder at that time?

20 A. Yes.

21 Q. And when we talk about Phase 2, was he
22 charged with another crime as part of Phase 2?

23 A. Yes.

24 Q. Can you explain to the members of the jury
25 how that happened in terms of having one charge

1 earlier, and then additional charges?

2 A. Sure. So we picked Mr. Gallegos up on
3 December 3rd. He remained in custody, and while he
4 was in custody, we developed probable cause to
5 charge him with other crimes.

6 Q. So there has been mention of a person
7 named Jose Gomez.

8 A. Yes.

9 Q. Do those crimes related to witness
10 intimidation and attempted murder, were those
11 charged after this date as new crimes or additional
12 crimes?

13 A. Yes. There was an incident in 2015, and
14 then an incident in 2016, and those were charged in
15 the Phase 2 indictments.

16 Q. Make sure we have a little bit of a
17 timeline here. You mentioned an incident in 2015.
18 Is there an allegation that Mr. Gallegos cut Jose
19 Gomez's hand?

20 A. Correct.

21 Q. And then after that incident, was he
22 charged in this case?

23 A. Yes.

24 Q. After this case was charged, was then Jose
25 Gomez allegedly attacked, and that's the allegation

1 where he was hit over the head with a machete and
2 another object?

3 A. Yes.

4 MR. CASTELLANO: Your Honor, at this time
5 we move the admission of Government's Exhibits 185
6 through 189.

7 THE COURT: Any objection from the
8 defendants?

9 MR. BURKE: No objection.

10 THE COURT: Not hearing any objection,
11 Government's Exhibits 185, 186, 187, 188, and 189
12 will be admitted into evidence.

13 (Government's Exhibit 185, 186, 187, 188,
14 and 189 admitted.)

15 MR. CASTELLANO: I'm also moving Exhibit
16 191.

17 THE COURT: Any objection to that?

18 MR. BURKE: No objection, Your Honor.

19 THE COURT: Not hearing any objection from
20 any other defendants, Government's Exhibit 191 will
21 also be admitted.

22 (Government's Exhibit 191 admitted.)

23 BY MR. CASTELLANO:

24 Q. Agent Acee, beginning with Exhibit 185, is
25 this Edward Troup on December 3, 2015?

1 A. It is.

2 Q. And at that point was he charged with the
3 two homicides that he's facing today?

4 A. Yes.

5 Q. Would you point him out for us in court,
6 please, and the identify him?

7 A. He's the gentleman on the first row. He
8 has a dark-colored suit on and a purplish shirt.

9 MR. CASTELLANO: Let the record reflect
10 that the witness has identified Defendant Edward
11 Troup.

12 THE COURT: The record will so reflect.

13 Q. Turning now to Exhibit 186, can you tell
14 us -- let's focus just on his stomach for right now.

15 A. There is a tattoo on his stomach that says
16 "Huero."

17 Q. In this investigation, have you known him
18 to be called Huero Troup?

19 A. Yes.

20 Q. Let's take a look at Exhibit 187. Is that
21 once again a picture on his stomach with the word
22 "Huero" on it?

23 A. Yes.

24 Q. Turning to Exhibit 188, can you tell us
25 what those letters are on his back?

1 A. "SWL."

2 Q. If you know, do you know what those
3 letters stand for?

4 A. Yes. Southwest Locos, an Albuquerque
5 street gang.

6 Q. Let me turn your attention now to
7 Government's Exhibit 189. Is that a picture of one
8 of his other tattoos?

9 A. Yes.

10 Q. And finally, 191. Let me focus on the
11 letters "S" and "W." Is that what's reflected on
12 the back of his legs or his calves?

13 A. Yes.

14 Q. And if you know, is that consistent with
15 the SWL tattoo he had on his shoulder?

16 A. Yes.

17 MR. CASTELLANO: At this time, I move the
18 admission of Government's Exhibits 297 and 298.

19 THE COURT: Any objection from the
20 defendants? Not hearing any objection, Government's
21 Exhibit 297 and 298 will be admitted into evidence.

22 (Government's Exhibits 297 and 298
23 admitted.)

24 BY MR. CASTELLANO:

25 Q. Beginning with Government's Exhibit 297,

1 who is that, Agent Acee?

2 A. Benjamin Clark.

3 Q. Can you tell the members of the jury
4 whether on this date he was charged with the murder
5 of Freddie Sanchez?

6 A. He was.

7 Q. And did he plead guilty to that charge,
8 and do you expect him to be testifying in this case?

9 A. Yes.

10 Q. Turning to Exhibit 298, what are we
11 looking at there?

12 A. It's a tattoo on Mr. Clark's right arm.

13 Q. I'm going to focus on kind of the circular
14 tattoo. Do you see that one?

15 A. It's like the Aztec Sun God-looking
16 tattoo.

17 Q. And do you recall if you saw something
18 similar to that tattoo on Edward Troup's arm on
19 Exhibit 189?

20 A. Yes, we did.

21 Q. Okay. First looking at 298, which is
22 currently on the screen now -- let me go back to
23 Exhibit 189, please. Is that the one you said is
24 similar to the one on Benjamin Clark's arm?

25 A. Yes.

1 MR. CASTELLANO: At this time, I move the
2 admission of Government's Exhibits 305, 306, 310,
3 and 311.

4 THE COURT: Any objection?

5 MR. BURKE: No objection.

6 THE COURT: Not hearing any objection,
7 Government's Exhibits 305, 306, 310, and 311 will be
8 admitted into evidence.

9 (Government's Exhibits 305, 306, 310, and
10 311 admitted.)

11 BY MR. CASTELLANO:

12 Q. Agent Acee, let me begin with Exhibit 305.
13 Who is this person?

14 A. Javier Alonso.

15 Q. And was he also charged with a murder?

16 A. Yes.

17 Q. Do you recall which one?

18 A. Freddie Sanchez.

19 Q. And did he plead guilty to that murder,
20 and do you expect him to be testifying in this case?

21 A. Yes.

22 Q. Let me turn now to Exhibit 306. And I
23 want to ask you specifically about the letters on
24 his chest, as well as the word on his stomach or
25 abdomen.

1 A. Okay.

2 Q. Can you point out for the members of the
3 jury the letters "S-N-M"?

4 A. Yes. I'm circling the "S-N-M."

5 Q. What's the word basically across the
6 midsection?

7 A. This word here is "Sindicato."

8 Q. And have you seen similar things like that
9 on other people in this case?

10 A. Yes.

11 Q. And have you also seen the word -- looks
12 like the word "Sindicato" is spelled with an "I"?

13 A. Yes, it is.

14 Q. Have you seen it spelled with a "Y"?

15 A. Yes, in the FBI, in the Department of
16 Corrections, and on SNM members.

17 Q. Let me turn your attention to Government's
18 Exhibit 310. I want to have you circle on his arm a
19 tattoo with the Zia symbol on it.

20 A. (Witness complies.)

21 Q. Is that something else you've seen,
22 running into people in this case?

23 A. Yes.

24 Q. And is there something in the middle of
25 the Zia tattoo?

1 A. The letter "S."

2 Q. Is that also something you've seen through
3 the course of this investigation?

4 A. It is.

5 Q. Have you seen the Zia symbol both with and
6 without the "S"?

7 A. Yes.

8 Q. And turning to Government's Exhibit 311, I
9 want to see if you can see on his arm his moniker or
10 his nickname?

11 A. Yes. It says "Wineo." I've underlined
12 it.

13 Q. Is he sometimes known as Wineo?

14 A. Yes.

15 MR. CASTELLANO: Your Honor, at this time
16 I move the admission of Government's Exhibits 319
17 through 322.

18 THE COURT: All right. Any objection from
19 any defendants?

20 MR. BURKE: No objection.

21 THE COURT: Not hearing any objection,
22 Government's Exhibits 319, 320, 321, and 322 will be
23 admitted into evidence.

24 (Government's Exhibits 319, 320, 321, and
25 322 admitted.)

1 BY MR. CASTELLANO:

2 Q. Agent Acee, let's begin with Exhibit 319.

3 Who is that person?

4 A. Ruben Hernandez.

5 Q. And was he also arrested on December 3rd
6 of 2015?

7 A. Yes.

8 Q. So when -- this is part of Phase 1?

9 A. Yes.

10 Q. So when Phase 1 hit, we had a number of
11 people arrested. Did you basically scour the area,
12 looking for these people to arrest them?

13 A. Yes.

14 Q. So when we have a bunch of people with
15 pictures from December 3, 2015, did you send out
16 various teams to arrest all of these people?

17 A. Yes, all over the state. And then we had
18 a processing center in Albuquerque, where they would
19 be dropped off, and we took these photographs.

20 Q. Is this how we had pictures of these
21 people holding up a sign? You arrested them, took
22 them to one place, and processed them?

23 A. Yes. The first and last photo are of the
24 person holding a sign with their name.

25 Q. And Mr. Hernandez, was he alleged to be

1 involved with the Freddie Sanchez murder?

2 A. Yes.

3 Q. And did he plead guilty to that charge,
4 and do you expect him to be a witness in this case?

5 A. Yes.

6 Q. Let me turn your attention to Government's
7 Exhibit 320. And I'll see if you can see his
8 nickname or moniker on that exhibit?

9 A. I do.

10 Q. Please point it out for the members of the
11 jury.

12 A. On the back of his right arm, it's
13 "B-O-L-O," and I've circled it.

14 Q. So he's sometimes referred to as Bolo?

15 A. Yes.

16 Q. Looking at Exhibit 321, I want to ask you
17 about some common themes you sometimes see in the
18 tattoos. Looking at the side of his arm near his
19 elbow, can you tell the members of the jury what
20 that is?

21 A. I see a couple things. Do you want me to
22 point those out?

23 Q. Yes, please.

24 A. I'll start at the bottom of his arm,
25 circling prison bars. Just above that, above the

1 skull, prison tower. And then the initials of a
2 street gang here, which I believe is West Side
3 Locos, "WSL."

4 Q. Okay. Let's turn to Exhibit 322 for a
5 closer look at that last tattoo.

6 A. Just a closer look at the initials "WSL."

7 MR. CASTELLANO: Your Honor, at this time
8 I move the admission of Government's Exhibits 653
9 and 656.

10 THE COURT: Any objection from the
11 defendants? Not hearing any objection, Government's
12 Exhibits 653 and 656 will be admitted into evidence.

13 (Government's Exhibits 653 and 656
14 admitted.)

15 BY MR. CASTELLANO:

16 Q. Agent Acee, beginning with Exhibit 653,
17 who is that person?

18 A. Timothy Martinez.

19 Q. Was he also arrested on December 3, 2015?

20 A. Yes.

21 Q. What was the allegation against him?

22 A. His involvement in the Javier Molina
23 murder.

24 Q. So that is a different murder that is not
25 being tried in this courtroom right now?

1 A. Yes.

2 Q. Is that the murder that was tried
3 beginning in January of this year?

4 A. Yes.

5 Q. And is he cooperating, is a question I
6 also want to ask you?

7 A. Yes.

8 Q. Do you expect that he will testify in this
9 trial?

10 A. Yes.

11 Q. Let's look at Exhibit 656.

12 And before I ask that question, is Timothy
13 Martinez also known as Red?

14 A. Yes.

15 Q. And looking at it, is this a picture of
16 his back?

17 A. It is.

18 Q. And I'm going to ask you, have you seen
19 tattoos like this, as well, including people who
20 identify with New Mexico?

21 A. Yes.

22 Q. His back says "Silver City." Do you know
23 him to be from Silver City, New Mexico?

24 A. He is.

25 Q. Did he plead guilty to the murder of

1 Javier Molina?

2 A. He did.

3 MR. CASTELLANO: Your Honor, at this time,
4 I move the admission of Government's Exhibits 660
5 and 668.

6 THE COURT: Any objection from the
7 defendants to either exhibit? Not hearing any
8 objection, Government's Exhibits 660 and 668 will be
9 admitted into evidence.

10 (Government's Exhibits 660 and 668
11 admitted.)

12 BY MR. CASTELLANO:

13 Q. Agent, beginning with Exhibit 660, who is
14 that person?

15 A. Jerry Montoya.

16 Q. What was he alleged to have done?

17 A. Participated in the murder of Javier
18 Molina.

19 Q. He won't be testifying in this trial, but
20 did he testify at the last trial?

21 A. He did.

22 Q. Was that after he pled guilty to the
23 murder of Javier Molina?

24 A. Yes.

25 Q. And more particularly, I'm going to show

1 you Exhibit 668. Is that an example of a -- well,
2 an example of two tattoos, the first "San Jose"?

3 A. Yes. That's the street gang that Mr.
4 Montoya is from.

5 Q. Is it known by another name for short, or
6 a shorter name?

7 A. "San Jo."

8 Q. And what about the other tattoos?

9 A. The Zia symbol with the "S in the middle.

10 Q. Is this another example of someone who may
11 have been a member of a street gang before becoming
12 an SNM Gang member?

13 A. Yes.

14 MR. CASTELLANO: Your Honor, I move the
15 admission of Government's Exhibits 670 and 671.

16 THE COURT: Any objection from the
17 defendants? Not hearing any objection, the
18 Government's Exhibits 670 and 671 will be admitted
19 into evidence.

20 (Government's Exhibits 670 and 671
21 admitted.)

22 BY MR. CASTELLANO:

23 Q. Let me turn your attention to Exhibit 670.
24 Agent Acee, who is that person?

25 A. Mario Rodriguez.

1 Q. And what was he initially charged with?

2 A. The murder of Javier Molina.

3 Q. Do you know him to be cooperating with the
4 Government?

5 A. He is.

6 Q. Let me turn your attention to Exhibit 671.
7 What is the tattoo across his abdomen, if you can
8 see it?

9 A. It says "Blue." That's his nickname. And
10 between the letters "L" and "U," the outline of the
11 state of New Mexico, and it says "Silver City NM."

12 Q. Now, do you -- is he an SNM Gang member?

13 A. He is.

14 Q. And do you know him to have any SNM
15 tattoos?

16 A. He does not.

17 MR. CASTELLANO: Your Honor, at this time
18 I move the admission of Government's 680 and 683, I
19 believe.

20 THE COURT: 680 and 683?

21 MR. CASTELLANO: Yes.

22 THE COURT: Any objection from any
23 defendant? Not hearing any objection, Government's
24 Exhibits 680 and 683 will be admitted into evidence.

25 (Government's Exhibits 680 and 683

1 admitted.)

2 BY MR. CASTELLANO:

3 Q. Turning to Exhibit 680 --

4 THE COURT: Do you suppose we could take
5 those up with Mr. Acee after the break?

6 MR. CASTELLANO: We can, Your Honor.

7 THE COURT: All right. Let's be in recess
8 for about 15 minutes.

9 All rise.

10 (The jury left the courtroom.)

11 THE COURT: Mr. Castle, take a look at
12 United States v. Albers, 93 F.3d 1469, Tenth Circuit
13 1996. I think on your attempt to get more in on the
14 facts of the crime, go the 608 route rather than 609
15 on Baby Rob Martinez, I think this case forecloses
16 it. So I think Mr. Beck's objection was correct,
17 and unless you convince me otherwise, I think that
18 case precludes it.

19 MR. CASTLE: I'm sorry?

20 THE COURT: United States v. Albers,
21 A-L-B-E-R-S, 93 F.3d 1469, Tenth Circuit 1996. Take
22 a look at it. But I think you're going to have to
23 go the 609 route on it, not 608.

24 All right. We'll be in recess for about
25 15 minutes.

1 (The Court stood in recess.)

2 THE COURT: All right. I think we've got
3 all the defendants back. We have an attorney for
4 each defendant. Let me suggest, I think I know
5 where you're going, Mr. Castle. If I'm missing --
6 but just maybe to shortcut, here's what I was
7 thinking, if you and the Government are in
8 agreement.

9 What if you prepared an order that's a
10 show cause order to all the defendants -- all the
11 cooperators that you're wanting to get the PSRs? I
12 guess it would actually go to the probation office.
13 Well, I guess it would be a show cause order to the
14 defendants that are having the PSR written, and
15 basically give them some reasonable timeframe to
16 show cause; or otherwise, the documents are going to
17 be produced. We'll order Probation, to be produced.

18 MR. CASTLE: That's fine.

19 THE COURT: And it sounds like -- Mr.
20 Beck, are you handling this portion?

21 MR. BECK: Sure.

22 THE COURT: Well, was it Ms. Armijo?

23 MR. BECK: I think it was Ms. Armijo, but
24 she stepped out.

25 THE COURT: Why don't you see if that

1 would work. It didn't sound like y'all were
2 objecting. It sounded to me like it was the
3 cooperators or those other people, and if y'all
4 would look at it and sign off on it. And then if
5 we've got some defendant that wants to object, I can
6 deal with them individually. But if they don't
7 think it's worth a fight, we'll just get the
8 materials in your hand.

9 Do you want to try that?

10 MR. CASTLE: That works, Your Honor. Mr.
11 Lujan's lawyer didn't object, and I think he might
12 be one of their first witnesses. I was wondering if
13 we could have that order signed -- or that inquiry,
14 I guess, done so we could get Probation to get that
15 one over to us sooner than later.

16 THE COURT: How do you suggest I do that?

17 MR. CASTELLANO: I can draft an order.

18 THE COURT: You can either do it en masse,
19 or do it individually. He hasn't sent anything to
20 me, has he? He's just objected to you orally?

21 MR. CASTLE: No, he just wants to make
22 sure the Government can redact personal information,
23 like he did the last time.

24 THE COURT: All right. That's fine. Get
25 me that order.

1 All rise.

2 (The jury entered the courtroom.)

3 THE COURT: All right. Everyone be
4 seated.

5 All right. I'll introduce my last clerk
6 for you. He grew up in Santa Fe, and then went to
7 Santa Cruz. Did I get it right this time? Santa
8 Cruz, not Santa Clara. Santa Cruz, University of
9 California. Then he went to Berkeley and got a
10 journalism degree, and then went to UNM Law School.

11 He externed for me a few years ago, and I
12 hired him. His parents are in Albuquerque. He'd
13 like to stay there.

14 I mentioned that Mr. Mendelson was pure
15 Texan, but he did have pretty good New Mexico
16 credentials. He worked as an extern or intern for
17 Representative Pearce, so he knew the southern part
18 of the state pretty well.

19 All right. Mr. Acee, I'll remind you that
20 you're still under oath. Mr. Castellano, if you
21 wish to continue your direct examination of Mr.
22 Acee, you may do so at this time.

23 MR. CASTELLANO: Yes, sir. Thank you.

24 THE COURT: Mr. Castellano.

25

1 BY MR. CASTELLANO:

2 Q. Agent Acee, I think I was about to show
3 you Government's Exhibit 680. Who is that person?

4 A. Robert Martinez.

5 Q. And was he one of the people charged with
6 the conspiracy to murder the Secretary of Department
7 of Corrections?

8 A. Yes.

9 Q. And was he arrested there on December 3,
10 2015?

11 A. He was.

12 Q. Was he in prison at the time?

13 A. Yes.

14 Q. Did you pull him from the prison system to
15 process him as part of this case?

16 A. Yes.

17 Q. Was he a leader in the SNM at one point?

18 A. He was.

19 Q. And before you arrested him, had he
20 renounced the gang, as far as you know?

21 A. Yes.

22 Q. Let me turn your attention to Government's
23 Exhibit 683. I would just ask you if you see an SNM
24 tattoo on his arm?

25 A. Yes. It's near his armpit. It says

1 "SNM."

2 Q. Basically moving from his armpit towards
3 his elbow, you have the letters "SNM"?

4 A. Yes.

5 Q. Is he a cooperating defendant in this
6 case?

7 A. Yes.

8 Q. Let me turn your attention --

9 MR. CASTELLANO: Let me ask defense
10 counsel first. Your Honor, at this time I move the
11 admission of Government's Exhibits 692 and 689.

12 THE COURT: Any objection from any
13 defendant? Government's Exhibits 692 and 689 will
14 be admitted into evidence.

15 (Government's Exhibits 692 and 689
16 admitted.)

17 BY MR. CASTELLANO:

18 Q. Agent Acee, let me show you Exhibit 692.
19 Who is this person?

20 A. Roy Martinez.

21 Q. And was he another person charged in the
22 conspiracy to murder Gregg Marcantel?

23 A. Yes.

24 Q. The Secretary of the Department of
25 Corrections?

1 A. That's correct.

2 Q. And was he charged with Anthony Baca as
3 well as Christopher Garcia?

4 A. Yes.

5 Q. Is he cooperating in this case?

6 A. Yes, he is.

7 Q. Let me show you Exhibit 689. Can you tell
8 us what we're looking at in that photo?

9 A. You're looking at tattoos on Mr.
10 Martinez's stomach of his street gang and the SNM.

11 Q. Beginning with the street gang, what do
12 you see?

13 A. On the right side of the photo, the
14 letters "WSL," West Side Locos. And on the left
15 side is the Zia symbol with the letters "SNM."

16 Q. Has he pled guilty, and is he cooperating?

17 A. Yes.

18 MR. CASTELLANO: Your Honor, at this time
19 I move the admission of Government's Exhibit 693.

20 THE COURT: Any objection from any
21 defendant? Not hearing any or seeing any,
22 Government's Exhibit 693 will be admitted into
23 evidence.

24 (Government's Exhibit 693 admitted.)
25

1 BY MR. CASTELLANO:

2 Q. Agent Acee, looking at Exhibit 693, who is
3 that person?

4 A. Gerald Archuleta.

5 Q. And at one point, was he a leader in the
6 SNM?

7 A. Yes.

8 Q. His date is different. It shows April 28,
9 2016. Can you tell the members of the jury why he
10 has a different date than the December defendants?

11 A. I hadn't yet taken his photograph, and I
12 also had him -- we arrested him as part of the
13 December takedown in Tennessee. An FBI team out
14 there arrested him.

15 Q. Was he living in Tennessee at the time?

16 A. Yes.

17 Q. And was he out of prison at that time?

18 A. He was. The agents arrested him as he was
19 heading to work.

20 Q. Was he eventually returned to New Mexico
21 on his charges?

22 A. Yes.

23 Q. And what happened when he returned to New
24 Mexico?

25 A. He agreed to cooperate.

1 Q. What was he charged with?

2 A. The attempted -- violent crimes in aid of
3 racketeering, attempt to commit assault resulting in
4 great bodily injury, I believe.

5 Q. And the jury, at least in opening
6 statements, has heard about Gerald Archuleta and
7 another person named Julian Romero?

8 A. Yes.

9 Q. And a dispute between them over one man
10 sleeping with another man's wife?

11 A. Correct.

12 Q. Is he one of those people?

13 A. Yes. Julian Romero slept with his wife.

14 Q. As a result, was Gerald Archuleta charged
15 with an assault on Julian Romero that occurred in
16 prison?

17 A. Yes.

18 Q. And you said that he began to cooperate.
19 Now, the defense attorneys referred to a three-year
20 deal that Gerald Archuleta got. The charge he pled
21 to, was that the maximum sentence for that charge,
22 three years?

23 A. Yes, that's the maximum sentence.

24 Q. Did he plead to that charge?

25 A. He did.

1 Q. And when he returned to New Mexico, did he
2 agree to cooperate?

3 A. He did.

4 Q. Can you tell the members of the jury how
5 he cooperated?

6 A. He agreed to wear a wire and go back up to
7 the prison and be surrounded with SNM members. As a
8 former leader who had been out of state, I figured
9 they would be pretty talkative and he'd get a lot on
10 the wire. And he did.

11 Q. So did he record other SNM Gang members in
12 the prison?

13 A. Yes.

14 Q. Without going into too much detail, would
15 you consider that a dangerous thing to do, recording
16 other SNM members in a prison facility?

17 A. Yes.

18 Q. Agent Acee, can you tell the members of
19 the jury whether Gerald Archuleta has any SNM
20 tattoos?

21 A. He does not.

22 Q. So even as a leader, he did not have
23 tattoos of -- well, the first question: Does he
24 have tattoos?

25 A. He has a lot of tattoos.

1 Q. Does he have any SNM tattoos?

2 A. No.

3 MR. CASTELLANO: At this time, I move the
4 admission of Government's Exhibits 698, 704, and
5 705.

6 THE COURT: Any objection from the
7 defendants? Not seeing or hearing any, Government's
8 Exhibits 698, 704, and 705 will be admitted into
9 evidence.

10 (Government's Exhibits 698, 704, and 705
11 admitted.)

12 BY MR. CASTELLANO:

13 Q. Beginning with Exhibit 698, can you tell
14 us who this person is?

15 A. Manuel Jake Armijo.

16 Q. And is he also known as Big Jake?

17 A. Yes.

18 Q. He also has a date of April 28, 2016. Was
19 he charged at a different time than the defendants
20 in this case?

21 A. Yes. This is the Phase 2 operation.

22 Q. Was he actually charged in an entirely
23 separate case, which is what we referred to as the
24 RICO indictment you mentioned?

25 A. Yes.

1 Q. Was he charged with RICO conspiracy?

2 A. He was.

3 Q. Can you tell the members of the jury
4 whether he has pled guilty and he is cooperating?

5 A. Yes.

6 Q. Turning to Exhibit 704, I want to draw
7 your attention to his wrist. What can you tell the
8 members of the jury about the tattoo on his wrist?

9 A. It's a Zia symbol with an "S" in the
10 middle.

11 Q. Is that also something you've seen
12 commonly in this case?

13 A. Yes.

14 Q. Can you turn your attention to Exhibit
15 705. Focusing specifically on his -- the back of
16 his right arm, in his tricep area, is that another
17 tattoo you would consider an SNM tattoo?

18 A. Yes. It's a Zia with an "S" in the
19 center.

20 MR. CASTELLANO: Your Honor, at this time
21 I move the admission of Government's Exhibits 706,
22 708, and 713.

23 THE COURT: Any objection from any
24 defendants? Not hearing or seeing any, Government's
25 Exhibits 706, 708, and 713 will be admitted into

1 evidence.

2 (Government's Exhibits 706, 708, and 713
3 admitted.)

4 BY MR. CASTELLANO:

5 Q. Agent Acee, beginning with Exhibit 706,
6 who is this person?

7 A. Frederico Munoz.

8 Q. And he also has a date of April 28, 2016.
9 Is that the day he was picked up on his charges?

10 A. Yes.

11 Q. And can you tell the members of the jury
12 whether he has pled guilty and is expected to
13 cooperate in this case?

14 A. Yes, he is.

15 Q. Turning to Exhibit 708, tell us about the
16 tattoo in the middle of his chest, please.

17 A. It's a Zia symbol with a large "S" in the
18 center, and then the letters "N" and "M."

19 Q. And is he a person who renounced the gang
20 even before he was charged in this case?

21 A. Yes.

22 Q. Turning to Exhibit 713, what is it that we
23 see on the back of his neck?

24 A. The word "Sindicato."

25 MR. CASTELLANO: At this time, I move the

1 admission of Government's Exhibits 541 and 542.

2 MS. TORRACO: Your Honor, on behalf of
3 Andrew Gallegos, we do object to Photograph 542. I
4 don't know if it's because I'm not wearing my
5 glasses, but the resolution of what's inside the Zia
6 is not clear.

7 I would either ask that the Government
8 produce a photograph with better resolution, or
9 conditionally admit it and make a clarification.

10 THE COURT: Do you still object?

11 MS. TORRACO: I think as long as the
12 Government is going to clarify what's inside the
13 Zia, and that it's not an "S." Thank you.

14 THE COURT: All right. I guess there is
15 not an objection now. Anybody else object? All
16 right. Not hearing any objection, Government's
17 Exhibits 541 and 542 will be admitted into evidence.

18 (Government's Exhibits 541 and 542
19 admitted.)

20 MR. CASTELLANO: I'm moving the admission
21 of Exhibits 853 through 857.

22 THE COURT: Any objection from any
23 defendants? Not seeing or hearing any, Government's
24 Exhibits 853, 854, 855, 856, and 857 will be
25 admitted into evidence.

1 (Government's Exhibits 853, 854, 855, 856,
2 and 857 admitted.)

3 BY MR. CASTELLANO:

4 Q. Agent Acee, beginning with Exhibit 541,
5 who is this person?

6 A. Andrew Gallegos.

7 Q. And do you see him in the courtroom today?

8 A. I do.

9 Q. Would you please point him out and
10 identify him for us?

11 A. He's seated in the back row, toward the
12 left. He has what looks like a gray suit, light-
13 colored suit, and tie on.

14 MR. CASTELLANO: Let the record reflect
15 the witness has identified the Defendant Andrew
16 Gallegos.

17 THE COURT: The record will so reflect.

18 Q. Okay. Agent, this also has a date of
19 April 28, 2016, rather than December 2015. Why is
20 that?

21 A. Mr. Gallegos was arrested during our Phase
22 2 operation.

23 Q. And during the Phase 2 operation, did you
24 then add to this case the Adrian Burns homicide?

25 A. Yes.

1 Q. At that point is when Mr. Gallegos was
2 charged with that homicide?

3 A. Yes.

4 Q. And I think I asked you this earlier. Are
5 Andrew Gallegos and Joe Lawrence Gallegos brothers?

6 A. Yes.

7 Q. Turning to Exhibit 542, what are we
8 looking at there?

9 A. Mr. Gallegos' right forearm, a tattoo
10 which depicts a Zia symbol, a skull in the center,
11 and Roman numerals on his wrist for 505.

12 Q. The same question: Have you seen Zia
13 symbols on various people in this case?

14 A. Yes.

15 Q. Turning to Exhibit 857, do you recognize
16 that letter?

17 A. Yes, it's the letter "E."

18 Q. And then 856?

19 A. The letter "S."

20 Q. When you put the two together, what does
21 that tell you about those letters?

22 A. East Side.

23 Q. Also, looking at Exhibit 855, can you make
24 it out? What do you see on his fingers?

25 A. "ESL." Then it looks like on his pinkie

1 finger, the number "1."

2 Q. Now, turning to Exhibit 854, what do you
3 see in that exhibit?

4 A. On the back of Mr. Gallegos' neck it says
5 "East Side XII."

6 Q. Do you know what the "XII" is, or what
7 number that reflects?

8 A. 12.

9 Q. And do you know the 12th letter of the
10 alphabet?

11 A. "L." Did I get that right?

12 Q. So the East Side, and "L" possibly for
13 Locos?

14 A. Yes.

15 Q. Looking at the Exhibit 853, focusing on
16 the letters in that tattoo.

17 A. The letters are "ESL."

18 Q. And will you circle those for the members
19 of the jury, please?

20 A. The smaller digit above the "L" is "12."

21 Q. Is that, once again, consistent with the
22 name East Side Locos?

23 A. Yes, sir.

24 Q. One person we don't have photographs for
25 is Defendant Arturo Garcia. Do you know why that

1 is?

2 A. Yes.

3 Q. Why is that?

4 A. He was arrested out of state, and so we
5 weren't able to photograph him the day of this
6 operation. By the time he was returned to New
7 Mexico, the search warrant that I had to photograph
8 him and take his DNA had already expired.

9 Q. So do warrants expire after a certain
10 amount of time, if you don't execute them?

11 A. Yes.

12 Q. Do you see him in the courtroom today, and
13 can you identify him for us, please?

14 A. Yes. He's in the back row, looks like a
15 dark-colored suit, shirt and tie.

16 Q. Is he wearing anything on his face?

17 A. Glasses.

18 MR. CASTELLANO: Your Honor, may the
19 record reflect the witness has identified the
20 Defendant Arturo Garcia?

21 THE COURT: The record will so reflect.

22 MR. CASTELLANO: Your Honor, at this time
23 we move the admission of 583 and 584.

24 THE COURT: Not hearing any objection,
25 Government's Exhibits 583 and 584 will be admitted

1 into evidence.

2 (Government's Exhibits 583 and 584
3 admitted.)

4 BY MR. CASTELLANO:

5 Q. Agent Acee, first turning to Exhibit 583,
6 who is that person?

7 A. Vincent Garduno.

8 Q. And because the date is 4/28 of '16, was
9 he part of Phase 2?

10 A. Yes.

11 Q. And can you tell the members of the jury
12 if he's charged in a separate indictment with a RICO
13 conspiracy?

14 A. He is.

15 Q. Turning to his tattoos in Exhibit 584, I
16 want to point out one in particular on his right arm
17 in the photograph, on the left side of the
18 photograph.

19 A. Okay.

20 Q. Can you please highlight that tattoo and
21 tell us what it is?

22 A. The tattoo that I've circled shows one
23 guy -- I'll call it a home boy -- strangling another
24 guy.

25 Q. And so through this investigation, are you

1 aware of a number of murders that occurred by
2 strangulation?

3 A. Yes.

4 Q. You mentioned earlier to the members of
5 the jury that when the Marcantel and Santistevan
6 conspiracies to murder Corrections officials came
7 up, you were looking for information related to
8 those. Do you remember that?

9 A. Yes.

10 Q. And as part of that, you also mentioned
11 you were conducting probation and parole searches?

12 A. I was.

13 Q. When you were conducting the probation and
14 parole searches, did you come across a defendant,
15 Billy Garcia?

16 A. Yes.

17 Q. Was he living on the streets and out of
18 prison at that time?

19 A. Yes. He had a home in Albuquerque.

20 Q. Did you approach him, seeking information
21 that he might have about that conspiracy to murder
22 Corrections officials?

23 A. Yes, I did.

24 Q. Did he have any information related to
25 that murder conspiracy?

1 A. He said he did not.

2 Q. And during your conversation with him, did
3 he -- did you have a discussion with him about who
4 brought him into the SNM Gang?

5 A. Yes.

6 Q. What did he tell you?

7 A. Animal, Steven Martinez.

8 Q. And what eventually happened to Steven
9 Martinez?

10 A. He was killed.

11 Q. And when we say he was brought into the
12 SNM, what does that mean to you? Or what do you
13 mean when you're asking somebody that question?

14 A. I'm asking who sponsored them.

15 Q. And is Steve Martinez also known as Felix
16 Steve Martinez?

17 A. Thank you. Felix Steve Martinez, a/k/a
18 Animal.

19 Q. Did you have any discussions with
20 Mr. Garcia about the Castillo and Garza murders?

21 A. Yes.

22 Q. Tell us about that interaction, please.

23 A. I was trying to flip him. I told him that
24 we were coming, that I wanted him to cooperate.
25 He'd been out for a while. He was older. I

1 explained what the VICAR was, because most people
2 don't know what that is.

3 Q. Tell us what VICAR is.

4 A. Violent Crimes in Aid of Racketeering.
5 More specifically, if it involves a murder, a person
6 can be sentenced to death or life in prison. And,
7 you know, we had a friendly conversation. I was
8 again trying to get him to cooperate.

9 Q. And what was his response when you asked
10 him about the Castillo and Garza murders?

11 A. He was very polite. He said he couldn't
12 talk to me. Respectfully, I mean. And he'd rather
13 just do his time in prison.

14 Q. Now, you mentioned life or death. Can you
15 tell -- just to clarify, well, for these cases, were
16 they at one point death penalty eligible?

17 MR. CASTLE: Your Honor, actually, under
18 the rule of completeness, there are other parts of
19 the statement of Mr. Garcia that I think that
20 counsel is required, upon request of opposing
21 counsel, to have the witness recount.

22 THE COURT: Do you have any objection to
23 that?

24 MR. CASTELLANO: I can cover it right now,
25 Your Honor. That's fine.

1 THE COURT: Go ahead, then.

2 BY MR. CASTELLANO:

3 Q. Before I get to that, I just want to
4 clarify for the defendants, you mentioned life or
5 death. I just want to make sure that none of these
6 defendants is facing the death penalty. Is that
7 true?

8 A. That is true.

9 Q. So I think what counsel is getting at is a
10 claim by Mr. Garcia that he was no longer associated
11 with the SNM?

12 A. He did tell me that.

13 Q. Did he claim that to you?

14 A. Yes.

15 Q. And was there an indication that he had
16 never formally declared that?

17 MR. CASTLE: Objection, Your Honor. I'm
18 not sure how this witness would know the universe of
19 people Mr. Garcia may have declared that he was no
20 longer associated with the SNM to.

21 THE COURT: Well, he can answer this yes
22 or no, to his knowledge. It will just be his
23 universe.

24 MR. CASTELLANO: Sure.

25

1 BY MR. CASTELLANO:

2 Q. Pointing out the whole statement, Agent
3 Acee, do you recall stating that this has never been
4 formally declared?

5 A. Yes.

6 Q. What is your understanding of that
7 statement?

8 A. I was telling him that he hadn't
9 debriefed, so he was still SNM in the eyes of -- he
10 was still SNM. He didn't debrief or renounce.

11 Q. Now, please explain that process to the
12 members of the jury, when you say he didn't debrief
13 or renounce.

14 A. In order to get out of the gang, both in
15 state and in federal prison, the person has to sit
16 down with the authorities and formally renounce.
17 Then they're moved out of the pod, and they're
18 separated from the gang. And that's true if they're
19 in prison --

20 MS. TORRACO: Objection, Your Honor. What
21 foundation, and how does he know this? And I don't
22 think that there is a strong conclusion -- it's
23 speculation that that's the only way you can
24 renounce and withdraw from the gang.

25 THE COURT: Well, lay some foundation how

1 he knows about this particular area.

2 BY MR. CASTELLANO:

3 Q. How are you familiar with this process,
4 Agent Acee?

5 A. This isn't the first prison gang case I've
6 worked. I've worked closely with Department of
7 Corrections, prison gang units in New Mexico,
8 California, Oregon, Washington, and other states.

9 Q. Are you familiar with a program in the New
10 Mexico Corrections Department known as the RPP?

11 A. Yes.

12 Q. What is RPP?

13 A. It's their gang dropout program, or
14 restore to population.

15 Q. And are you familiar with the process by
16 which gang members and people in prison move into
17 that program?

18 A. Yes. I've had -- I've been present for
19 some of those debriefings, and I'm very familiar
20 with it.

21 Q. And, in fact, are some of the people who
22 are cooperating in this case people who are going
23 through or who have gone through that program?

24 A. Yes.

25 Q. And as part of that program, did part of

1 that process include what you were just talking
2 about in terms of debriefing and renouncing the
3 gang?

4 A. Correct.

5 Q. When you say that regarding Billy Garcia,
6 is that the process you were discussing with him of
7 not having renounced or debriefed?

8 A. Yes.

9 Q. Is that what you meant when you asked him
10 that question?

11 A. Yes. The members of the gang know what it
12 is, too. That's why I phrase it that way.

13 Q. Can you tell us about his statement about
14 refusing to cooperate, and what he would rather do
15 instead of cooperate?

16 A. He said that he understood we had a job to
17 do, but he couldn't help us, and he'd rather go to
18 prison.

19 Q. There was a name found in his -- on a
20 piece of paper, on a handwritten note. Do you
21 recall whose name that was?

22 A. Yes.

23 Q. Who was that?

24 A. Billy Cordova, Little Shadow.

25 Q. Who is Billy Cordova?

1 A. He's a younger SNM member. That stuck out
2 at me because, again, part of the reason we were
3 there was trying to stay in front of the Marcantel
4 hit. So to have a phone number to a number on the
5 streets was important to me. I later learned that
6 Cordova was locked up.

7 Q. And in terms of the timeline, this
8 conversation with -- so we have our players right --
9 with Billy Garcia, did that occur on August 28th of
10 2015?

11 A. Yes.

12 Q. So March is when you find out about the
13 threats?

14 A. Yes.

15 Q. August is when you speak to Mr. Garcia?

16 A. Yes.

17 Q. And December is when people are indicted?

18 A. Correct.

19 Q. Did you let him know that you would be
20 coming back to be charging him with those murders?

21 A. I did.

22 Q. Now, since Billy Cordova was mentioned
23 there, did you have an interaction with Billy
24 Cordova at any point in time?

25 A. I did.

1 Q. Can you tell us about that interaction,
2 please?

3 A. I found Billy Cordova up at the
4 Metropolitan Detention Center in Bernalillo -- the
5 Albuquerque area jail.

6 Q. Why was he in jail?

7 A. For murder. And I did not intend to speak
8 with him that day. I actually had gone up to the
9 jail to talk to an informant that was in the jail.
10 However, when the Corrections staff pulled out the
11 informant I wanted to talk to, they did it in such a
12 way that it was pretty obvious he was going to the
13 gang office. So to remedy that, I asked the
14 correctional staff to pull all the SNM members out
15 that day, to make it look like we were interviewing
16 everybody.

17 So Billy Cordova was one of the people. I
18 didn't expect him to talk to me. I didn't even have
19 a notepad out when he walked in the room. In fact,
20 they brought extra officers in because they thought
21 he would probably try to assault us.

22 Q. Why did you think he would not talk to
23 you?

24 A. He was a pretty hardcore SNM member, just
25 committed a murder, and he was a target of our case.

1 He was young and still going hard.

2 Q. In terms of timeframe, if you found his
3 name in Billy Garcia's house in August of 2015, when
4 is it that you actually met Billy Cordova himself?

5 A. After the first-phase takedown, early
6 2016 -- you know, actually I take that back. It
7 was -- it was after I spoke with Mr. Garcia. I'd
8 have to look at my reports to give you an exact
9 date.

10 But I believe it was after I talked to
11 Mr. Garcia, and it was before the Phase 2 takedown.
12 So in that range there.

13 Q. And when you met with Mr. Cordova,
14 believing there was going to be a fight when you met
15 him, did something else happen during that
16 interaction?

17 A. He walked in with a big smile on his face.
18 And he knew we were the feds. And he sat down and
19 talked to us.

20 Q. At the point that you met him, was it
21 already known that members of the SNM had been
22 rounded up in December?

23 A. Yes. The first phase takedown had already
24 occurred. There was a lot of media coverage and
25 stuff, so most of the guys knew.

1 Q. And when you met with him, is there
2 anything he agreed to do for the FBI?

3 A. He agreed to wear a wire and go back into
4 the prison in Santa Fe, in the SNM pod.

5 Q. Once again, was he a member who was
6 incarcerated, agreed to record other SNM members in
7 a prison setting?

8 A. Yes.

9 Q. Can you tell the members of the jury
10 whether he got recordings of other people related to
11 the Javier Molina murder?

12 A. He did.

13 Q. And before that time, though, was he
14 cooperative with you?

15 A. Before I met him, no.

16 Q. As far as you knew, was he cooperating
17 with law enforcement when you found his name in
18 Billy Garcia's house?

19 A. He was not.

20 Q. When you met him, was he an active SNM
21 Gang member?

22 A. Very active, yes.

23 Q. One of the people mentioned in the
24 Castillo and Garza murders is someone named Angel
25 DeLeon. Do you know -- well, has he been arrested

1 in this case?

2 A. No.

3 Q. Can you tell the members of the jury
4 whether he's a fugitive?

5 A. He is a fugitive.

6 Q. And is he the only person in these
7 indictments who remains a fugitive?

8 A. Yes.

9 MR. CASTELLANO: May I have a moment, Your
10 Honor?

11 THE COURT: You may.

12 MR. CASTELLANO: Thank you, Your Honor. I
13 pass the witness.

14 THE COURT: Thank you, Mr. Castellano.

15 Mr. Castle, do you wish to cross-examine
16 Mr. Acee?

17 CROSS-EXAMINATION

18 BY MR. CASTLE:

19 Q. Agent Acee, I want to ask you about a
20 couple of things initially, then we'll go from
21 there.

22 One of the things that you testified about
23 a little while ago was a search you may have done in
24 the last week-and-a-half or so. Do you recall that?

25 A. Yes, sir.

1 Q. And was that at PNM North, the North
2 facility?

3 A. We hit both facilities, North and South.

4 Q. Okay. And it was at the North facility
5 you found discovery?

6 A. Both.

7 Q. Were a lot of the people that you called
8 cooperators housed at the PNM North?

9 A. Currently? Or over time?

10 Q. During the time of the -- well, let's just
11 call it --

12 THE COURT: I thought we were going to not
13 go there.

14 MR. CASTELLANO: Objection, Your Honor.

15 THE COURT: Yeah.

16 MR. CASTLE: Okay. I don't know how else
17 to deal with this, Judge.

18 THE COURT: Do y'all want to talk a
19 second? Why don't you just talk and see if you can
20 work it out.

21 MR. CASTLE: We have an agreement.

22 THE COURT: Okay.

23 BY MR. CASTLE:

24 Q. Without regard to what prisons you
25 searched, the prisons that you searched, did those

1 contain at one time during -- after the arrests,
2 some of the cooperators in this case?

3 A. Yes.

4 Q. And those cooperators were given copies of
5 their tablets; is that right?

6 A. They were given tablets.

7 Q. With discovery?

8 A. Yes.

9 Q. And so with regard to Mr. Garcia, Billy
10 Garcia, he wasn't housed in any of those facilities
11 where you found that discovery during the pendency
12 of this case; is that right?

13 A. That's right.

14 Q. There was a lot of talk about Grand Juries
15 and how it was indicted and things of that nature.
16 Would I be correct in stating that the Grand Jury --
17 the grand jurors never got to meet personally any of
18 these cooperators?

19 A. Not in the initial indictments. I'm just
20 pausing. I'm trying to remember. At the
21 superseding, I don't think we used any either.

22 Q. Let's just keep it to the indictment of
23 these fellows.

24 A. Sure. No.

25 Q. Okay. There was also indication that they

1 had a program called RPP, which is a gang dropout
2 program; is that right?

3 A. Yes, sir.

4 Q. There is another way to drop out of the
5 gang, isn't there, other than RPP?

6 A. There is a couple.

7 Q. One is turning their life over to God?

8 A. Going Christian.

9 Q. I think you indicated, am I correct, that
10 when your investigation began in this case in March
11 2015, your first goal was to take care of and
12 address the immediate threat to individuals with the
13 Department of Corrections?

14 A. Yes.

15 Q. And then it kind of grew into a larger
16 investigation of the SNM Gang generally; is that
17 right?

18 A. It was always large, but the priorities,
19 if you will, were -- you just mentioned the first
20 priority.

21 Q. Sure. I want to talk a little bit about
22 the SNM Gang. I think you've gone back and looked
23 at the history and analyzed kind of how it started
24 and where it went; is that right?

25 A. Yes, sir.

1 Q. When the SNM Gang first happened, it was
2 after a pretty horrible riot here in the New Mexico
3 prisons; am I right?

4 A. Yes, sir.

5 Q. And what happened in that riot was, 30 or
6 so different inmates were murdered, right?

7 A. Thirty-three, yes.

8 Q. And others were raped?

9 A. I believe so.

10 Q. And others were assaulted that didn't
11 result in death?

12 A. Yes. I think there were about 200
13 injured.

14 Q. When the SNM was first formed, it was
15 formed by a group of gentlemen who would be in their
16 60s to 70s about now, right?

17 A. Yes.

18 Q. And the original purpose of the SNM was to
19 protect each other? That was one of the purposes;
20 is that right?

21 A. Yes.

22 Q. To stop the bulldogging from other groups?

23 A. Yes.

24 Q. To earn money?

25 A. Yes.

1 Q. And to help each other and their families
2 in any way possible?

3 A. I don't see a lot of that. But that is a
4 good idea.

5 Q. Then it kind of morphed over time into
6 more illicit areas; is that correct?

7 A. I think it's been that all along.

8 Q. Well, your investigation included not just
9 the threat to the Corrections officers, but it also
10 dealt with drug dealing, firearms trafficking,
11 possession of firearms, and things of that nature;
12 is that right?

13 A. Yes.

14 Q. Would it be correct that one of the
15 purposes of the investigation that you worked on was
16 to dismantle the SNM Gang?

17 A. Yes.

18 Q. There were several methods that were used
19 to dismantle the gang; am I right?

20 A. Yes.

21 Q. One was by charging people with crimes?

22 A. Yes.

23 Q. Another was by turning various SNM members
24 into informants; is that right?

25 A. That tends to dismantle them, as well.

1 Q. Right. Because you can't be an informant
2 and a member of any gang? You pretty much made a
3 different choice?

4 A. Correct.

5 Q. Although some SNM members try to do both,
6 don't they?

7 A. They do.

8 Q. Like Frederico Munoz?

9 A. Plays both sides. Past tense. Played
10 both sides.

11 Q. We'll talk about that.

12 A. I'm sure we will.

13 Q. Now, during the investigation, when you
14 would contact various people that you believed were
15 SNM members or former members or associates, would
16 you give those people a choice?

17 A. Sometimes, yes.

18 Q. And that choice often took the place of
19 cooperate or be prosecuted?

20 A. Well, I like both.

21 Q. Okay.

22 A. But sometimes, yes. Oftentimes, I
23 would -- that was the gist of it.

24 Q. Cooperate or be fully prosecuted --
25 perhaps that's a better term -- to the extent of the

1 law?

2 A. I mean, I made it clear, "We're coming for
3 you guys. You've got to figure out where you stand
4 on that."

5 Q. Okay. Well, there has been talk about
6 elephants in the room. Let's get rid of one. Are
7 you familiar with the name of any kind of informant
8 SNM members that are going to testify for the
9 Government in this case?

10 A. I am.

11 Q. Has any one of them not asked or received
12 some kind of a break or -- in return?

13 A. Yes. I can think of one off the top of my
14 head. I'll have to go through the Rolodex. But the
15 first one I thought of was Sammy Griego.

16 Q. Well, Sammy Griego wasn't charged with
17 offenses, right?

18 A. No. He -- a letter was addressed to him,
19 but we caught it before he did.

20 Q. Well, let's talk about Sammy Griego. In
21 your investigation, you uncovered a number of crimes
22 that Sammy Griego committed while as an SNM member;
23 is that right?

24 A. I think he was a drug dealer, and I'm
25 familiar with one failed assault, yes.

1 Q. And that was while as an SNM member?

2 A. Yes, sir.

3 Q. And did he get prosecuted in this case?

4 A. No.

5 Q. So that was better than getting a deal? I
6 mean, he didn't get prosecuted at all?

7 A. Well, yeah. There's a lot of members, and
8 I think we've run out of the attorneys.

9 Q. Well, I think you just talked about
10 another set of indictments about to come down?

11 A. I hope so.

12 Q. So it hasn't been a lack of attorneys,
13 sir, that has caused you not to charge Sammy Griego
14 with a crime?

15 A. Well, part of that is true, and part is
16 not. There is a lack of attorneys, and I've been
17 advised of that. But Sammy Griego was not charged.

18 Q. Agent Acee -- well, I'll let that pass.

19 Now, would I be correct that none of the
20 defendants here in this courtroom were charged or
21 indicted by any Grand Jury as being involved in the
22 conspiracy to murder Mr. Marcantel and
23 Mr. Santistevan?

24 A. That's correct.

25 Q. But during your investigation of that

1 case, you did uncover evidence that a number of
2 individuals who were in the SNM had participated in
3 that plot; is that right?

4 A. Yes.

5 Q. Can you tell us the names of anybody that
6 come up to the top of your head that were indicted
7 for their role in that?

8 A. Sure. Anthony Ray Baca, Pup. Christopher
9 Garcia, Nerviosa. Robert Martinez, Baby Rob. Roy
10 Martinez, Shadow or Big Shadow. And I think in the
11 RICO conspiracy there are some overt acts related to
12 Mandel Parker, Chuco.

13 Q. And are we going to hear from any of those
14 people?

15 A. Yes.

16 Q. Okay.

17 A. I believe so. I mean, I don't call
18 witnesses, but --

19 Q. I understand. But on the list of the
20 Government witnesses?

21 A. Roy Martinez and Robert Martinez.

22 Q. Were any of the letters that were sent out
23 about that conspiracy -- did they find their way to
24 Mr. Archuleta, all the way out in Tennessee?

25 A. I don't believe so. But I am aware

1 that -- or I believe nine letters were written, and
2 we only recovered eight. I don't believe one was
3 addressed to Mr. Archuleta.

4 Q. Was there any phone calls made to him
5 about it?

6 A. Yes.

7 Q. So he was aware, even in Tennessee, about
8 this plot?

9 A. I wanted to pull him into it, so I had
10 somebody call him. I'm hesitating because I don't
11 recall all the details. But I did gauge his
12 interest in it.

13 Q. Mr. Archuleta, even though he was in
14 Tennessee, had not renounced; is that right?

15 A. He had not.

16 Q. That was why he was able to wear a wire in
17 the prison? That was one of the reasons?

18 A. One of the reasons.

19 Q. The other reason is that he was an
20 extremely powerful SNM leader?

21 A. Extremely popular.

22 Q. And powerful?

23 A. At times, he was.

24 Q. To the degree where he could order people
25 to kill other human beings?

1 A. Yes.

2 Q. And did?

3 A. And did.

4 Q. Now, there was some discussion about
5 wiretaps. I think one of my colleagues may have
6 misspoke about wiretaps. But the phone calls that
7 these defendants made, ever since they've been
8 thrown in jail on this indictment, have been
9 collected and reviewed by the FBI; is that right?

10 A. For the most part. All except the ones to
11 their attorneys, yes.

12 Q. And you don't have to get a wiretap for
13 those? You can get them by just calling up
14 Corrections and ordering them?

15 A. Yes, sir. All the outgoing calls are
16 recorded.

17 Q. So even though there may not have been a
18 wiretap when that attorney was talking about
19 statements from -- I can't remember which
20 defendant -- was it Allen Patterson?

21 A. I believe so, that he was talking to his
22 family.

23 Q. Those were calls that he was talking about
24 from jail?

25 A. Jail calls, yes.

1 Q. You did do wiretaps of other SNM members'
2 phones; is that right?

3 A. Yes. I mean, to be clear, there were
4 consensual wires, and I did obtain court orders.
5 But I just wanted to be clear, in the context of a
6 normal Title III, that's not what these were. These
7 were consensual wires with court orders.

8 Q. So you didn't do any Title III wiretaps?

9 A. No, sir.

10 Q. Consensual recordings. Is that where you
11 put a device, perhaps, under some -- well, I won't
12 get into your secret methods because it's not
13 relevant here, but it's where you somehow put the
14 person in a situation where they can record and you
15 can listen in?

16 A. And we're doing it with their consent,
17 whether it's a phone or a secret device, yes.

18 Q. Right. So, for example, if it was me, you
19 could do something with me, where I'm wired up, and
20 when I talk to Mr. Cooper, you could listen as long
21 as I consented?

22 A. Yes.

23 Q. In all the times that you did that, did
24 you develop any evidence from those consensual
25 devices that showed that Billy Garcia committed any

1 murders?

2 A. No.

3 Q. I want to talk to you a little bit about
4 the time that you went over to Billy Garcia's house.
5 That was August 28, 2015?

6 A. Yes, sir.

7 Q. That was around 7:00 in the morning; is
8 that right?

9 A. I think so.

10 Q. The FBI -- you didn't go alone; is that
11 right?

12 A. That's right.

13 Q. You went with, I think, at least one other
14 FBI agent, a couple of task force officers, and
15 maybe some people from Parole and Probation?

16 A. That sounds right.

17 Q. So it was about five, six, something like
18 that, people?

19 A. Yes, sir.

20 Q. And when the FBI goes over to talk to
21 people, they'll often do it in early morning hours,
22 when they figure they're home or still sleeping; is
23 that right?

24 A. It depends. If we want to arrest them, we
25 try to show up when they're sleeping. If we want to

1 talk, we want to talk to them any time of the day.

2 Q. When you went over to Mr. Garcia's house
3 at 7:00 in the morning, was he home?

4 A. He was not.

5 Q. Did somebody from your group place a phone
6 call to him?

7 A. Yes, somebody from the Corrections
8 Department. I think it was his parole officer.

9 Q. Okay. And they called him and told him,
10 "Come on home"?

11 A. Yes.

12 Q. And did he come home immediately?

13 A. He did, yes.

14 Q. Within about, I think, 15 minutes?

15 A. Sounds about right.

16 Q. And how did he get there?

17 A. Bicycle.

18 Q. So he's on a bicycle?

19 A. Yes.

20 Q. Mr. Garcia was 60 years old at that time;
21 is that right?

22 A. I take your word for it, but that's
23 probably correct.

24 Q. He sat down and talked to you?

25 A. We didn't do any sitting. But we talked.

1 Q. Okay. You searched his house?

2 A. I didn't. The Probation/Parole officers
3 did. I was there.

4 Q. But you thought it was done well enough
5 that you didn't do anything further?

6 A. I'm sorry?

7 Q. You didn't have to go back and do another
8 search yourself; they did a good search?

9 A. They did. And he was cooperative.

10 Q. And you talked earlier about finding guns
11 in some of these parolees' searches?

12 A. Yes, sir.

13 Q. Did you find a gun in Mr. Garcia's house?

14 A. No.

15 Q. Now, his house isn't really a house, it's
16 kind of a trailer; is that right?

17 A. There were, if I remember correctly, two
18 trailers next to a house. He slept in one of the
19 smaller trailers.

20 Q. And it was on a street in Albuquerque?

21 A. Yes, sir.

22 Q. A lot of his family members lived on that
23 street?

24 A. I think -- I'm aware that some family
25 members lived in the house. I don't know about any

1 other neighbors.

2 Q. Did you do any background investigation on
3 Mr. Garcia?

4 A. I did.

5 Q. And did you learn that his family lived
6 there for a couple generations on that street in
7 Albuquerque? And please, I don't want you to
8 mention the street.

9 A. I will not. So to answer your question,
10 the FBI, we have analysts that did backgrounds. I
11 would review them. But to the detail you're asking,
12 I don't know.

13 Q. Did you find any drugs in his trailer?

14 A. No.

15 Q. And was his brother's house that was right
16 across the way, was that also searched?

17 A. I think the search was just limited to his
18 trailer. And the Parole officers may have checked
19 the common areas of the house. But I didn't ever
20 enter the house.

21 Q. I think that might have been the second
22 time, when he got arrested, that they searched both
23 houses.

24 A. And I wasn't present for that.

25 Q. You said he was pleasant?

1 A. He was.

2 Q. You told him you were after -- he didn't
3 become a cooperator, that he was going to be
4 charged?

5 A. I did.

6 Q. A little over three months later, he in
7 fact was charged?

8 A. Yes, sir.

9 Q. And when he was arrested, where was he
10 arrested?

11 A. I believe at his residence. But I was in
12 a command post. I wasn't there.

13 Q. So he was still at his house?

14 A. Yes, sir.

15 Q. He didn't flee?

16 A. No.

17 Q. There was no problem with the arrest?

18 A. Not that I'm aware of, no.

19 Q. The arrest happened early, at 4:00 in the
20 morning? Does that sound about right?

21 A. It did. I had nighttime service warrants,
22 yes.

23 Q. So you do it so that they're asleep
24 essentially, right?

25 A. Safer for everybody, yes.

1 Q. And so you go in there -- if I could show
2 you what's been admitted as Exhibit 84 of the
3 Government's. It doesn't surprise you that
4 Mr. Garcia's -- well, his eyes are red because it's
5 early morning, right?

6 A. I'll take your word for it. I don't think
7 I looked that close.

8 Q. Well, you're hardly 60 years old, I take
9 it. But would you be surprised that most
10 60-year-old men, at least who have woken up at 4:00
11 in the morning, are going to have bloodshot eyes?

12 A. I agree with you. I usually get up about
13 that time, too, and probably look the same way.

14 Q. When there was -- when you're doing -- are
15 you familiar with an organization called Victory
16 Outreach?

17 A. Yes.

18 Q. And what are they?

19 A. My opinion? They're an outreach
20 organization that works with, from what I've
21 observed a lot of times, ex-cons, ex-inmates.

22 Q. They also do other Christian-related
23 matters that don't involve ex-cons?

24 A. Yes. And I failed to say -- I'm sorry --
25 that it is a Christian organization affiliated with

1 a lot of churches around the country.

2 Q. Now, did you -- in your investigation of
3 the background of Mr. Garcia, did you learn whether
4 he was working with that group or not?

5 MR. CASTELLANO: Objection; calls for
6 hearsay.

7 THE COURT: Well, this is just a yes/no.
8 We'll see if he has any knowledge that we need to go
9 to.

10 A. No.

11 Q. Did you ever interview a Pastor Joe
12 Williams, or anybody under your umbrella interview a
13 Pastor Joe Williams from Victory Outreach?

14 A. I believe I've met him, but on another
15 case.

16 Q. When he was arrested, the trailer that he
17 lived in was searched again; is that right?

18 A. Yes.

19 Q. And, again, no guns, no drugs, nothing was
20 actually seized at all?

21 A. No items were seized.

22 Q. And his brother's house was searched that
23 time?

24 A. Yes. I included that address in the
25 search warrant because he had access to it.

1 Q. And nothing was found there?

2 A. I don't believe so.

3 Q. And do you recall when that search
4 happened -- well, it's normal that what happens when
5 you do searches, you have everybody come out of the
6 house, even if they're not somebody that is a
7 suspect?

8 A. Yes. There was a SWAT team there.

9 Q. And do you recall that it was Mr. Garcia's
10 brother, Mr. Garcia's sister, his nephew that was in
11 the house that was searched across the way?

12 A. I don't, sir. I wasn't there. And we did
13 dozens that morning.

14 Q. So you're not disputing that might have
15 been the case?

16 A. I'll take your word for it, sir.

17 MR. CASTLE: Your Honor, how long --

18 THE COURT: I was wondering if this would
19 be a good place. Do you want to break? Does this
20 work for you?

21 MR. CASTLE: Yes.

22 THE COURT: All right. We're going to be
23 taking our first overnight break during the
24 Government's case-in-chief, so I'm going to remind
25 you of a few things that are especially important.

1 Until the trial is completed, you're not
2 to discuss the case with anyone, whether it's
3 members of your family, people involved in the
4 trial, or anyone else, and that includes your fellow
5 jurors. So if anyone approaches you and tries to
6 discuss the trial with you, please let me know about
7 it immediately.

8 Also, you must not read or listen to any
9 news reports of the trial. Again, don't get on the
10 internet and do any research for purposes of this
11 case.

12 And finally, remember that you must not
13 talk about anything with any person who is involved
14 in the trial, even if it doesn't have anything to do
15 with the trial.

16 If you need to speak with me, simply give
17 a note to one of the Court Security Officers or
18 Ms. Bevel.

19 I'll start declining to give those every
20 time we take a break, but you may hear them a little
21 bit tomorrow as we get ready for the weekend, so be
22 patient with me.

23 Thanks for your hard work today. I
24 appreciate the way you've gone about your task.
25 You're a good group, and I appreciate the way you've

1 done everything that we've asked you to do.

2 We'll see you tomorrow at 8:30, and we'll
3 try to be ready for you and get a good day's worth
4 of work in and close out the week.

5 All right. Y'all have a good evening.

6 (The jury left the courtroom.)

7 THE COURT: All right. See y'all at 8:30
8 in the morning.

9 MS. HARBOUR-VALDEZ: Your Honor, before we
10 get off the record, can we get an update on the
11 taint team and what the status is with that?

12 Because I think Agent Acee testified about
13 that today, and now we're a little unclear who was
14 affected, what was found. If we could at least --

15 MR. CASTELLANO: That was a different
16 search, Your Honor. That was at the penitentiary.
17 It wasn't this search. That's why I brought it up,
18 because I didn't --

19 MS. HARBOUR-VALDEZ: I'd still like a
20 report, though.

21 THE COURT: Well, why don't you just call
22 the taint team?

23 MS. HARBOUR-VALDEZ: Okay.

24 THE COURT: I don't have any restriction
25 on you just calling the taint team.

1 MS. HARBOUR-VALDEZ: Okay.

2 THE COURT: The Government, I think they
3 should -- we should all be present when they talk.
4 But you can just call and get an update.

5 MR. CASTLE: Judge, I can give the Court
6 an update. I think they're planning to give the
7 materials to the Court to make a decision on. We
8 need to get to the bottom of it, because I think the
9 clear implication that was made here today is that
10 these gentlemen here have been distributing
11 discovery and putting witnesses at risk. And if
12 that's not true, we have an obligation, all of us,
13 to clear that up on the record.

14 THE COURT: Well, do you think that there
15 was any implication of the defendants here? I don't
16 think so.

17 MR. CASTLE: Well, why else would they
18 have brought it up?

19 MR. CASTELLANO: Your Honor, there are two
20 different things. The taint team review and what
21 Agent Acee testified to are two different searches.
22 This had nothing to do with the taint team.

23 THE COURT: Well, let's just see if we
24 can -- y'all talk with Mr. Acee and see if there's
25 some question that can just remove that. I didn't

1 get that impression. If you're getting it, we need
2 to deal with it. Why don't we see if there's some
3 question. Y'all can talk and see if some colloquy
4 will just clear that up.

5 All right. Y'all have a good evening.

6 MS. TORRACO: Your Honor, before you
7 recess all of us -- I don't want to add more drama
8 for the evening, but I have some motions I'd like to
9 make first thing in the morning before we resume.

10 THE COURT: Well, we'll try. We'll try.

11 MS. TORRACO: Okay.

12 THE COURT: You might send me an email so
13 that I can be thinking about them, because we're
14 going to be running a pretty tight evidentiary shift
15 here.

16 All right. See you in the morning.

17 (The Court stood in recess.)
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1 April 13, 2018

2 THE COURT: All right. Let's go on the
3 record. I think Mr. Castle gave me two orders on
4 this PSR stuff. Did anybody have any objection or
5 issue with those two forms of order?

6 All right. Otherwise, I'll sign them.
7 I've signed them. I'm going to have Ms. Bevel file
8 them and get that process going.

9 Ms. Torraco, you had something you wanted
10 to raise this morning?

11 MS. TORRACO: Yes, Your Honor. Thank you
12 very much. And I will be brief. I just want, for
13 the record, to renew my motion to sever. In all
14 candor, Your Honor, yesterday I was so shocked when
15 the testimony about the hit on Marcantel and
16 Santistevan and Vigil came out. I mean, I literally
17 felt like I had been hit with a bucket of water,
18 because I've only been in the case three months, but
19 I thought certainly this doesn't come in this case.
20 I thought that was the deal, that the first case is
21 about the hit. We got severed out so the testimony
22 about the hit on Marcantel doesn't come in on this
23 case, and yet there was all this free discussion
24 about it.

25 That would absolutely never come in in a

1 trial against Andrew Gallegos. And I believe the
2 prejudicial effect and the impact that it had on the
3 jury is going to far outweigh any probative value as
4 to Andrew Gallegos, because there is no probative
5 value of all of that evidence coming in regarding
6 Andrew Gallegos.

7 Further, there was testimony about Mario
8 Montoya, Robert Lovato, Javier Molina, Shane Dix,
9 Michael Giron, Sam Chavez, Esteban Ortega, Steve
10 Morales. None of that is relevant to Andrew
11 Gallegos and would never have come in in a trial
12 against Mr. Gallegos. I believe the impact was very
13 emotional. I believe it did evoke an emotional
14 response to the jury. I believe it's a prejudice
15 that cannot be remedied by instructions and in
16 addition to the motion to sever, I would also move
17 for a mistrial as to Andrew Gallegos.

18 Thank you.

19 THE COURT: All right. Thank you, Ms.
20 Torracco. Mr. Burke.

21 MR. BURKE: Your Honor, I apologize for
22 not sending an email. I think the appellate lawyers
23 would want me to renew our motion for severance, as
24 well, based on spillover effect as to Mr. Troup,
25 based on the opening statements and early testimony

1 yesterday.

2 THE COURT: All right. Thank you,
3 Mr. Burke.

4 Do you want to make any response?

5 MS. ARMIJO: Your Honor, just that much of
6 what defense counsel for Andrew Gallegos is talking
7 about, the whole Marcantel -- that came up during
8 co-defendants' opening statements. And I think they
9 even said that Marcantel and Santistevan were
10 murdered. So a great deal of what she's referring
11 to as far as that came out in defense opening
12 arguments, and so the United States had a right to
13 cover it, certainly. And I'd specifically ask to --
14 oh, my goodness. I'm forgetting what the other
15 thing was that she had mentioned. Oh. All the
16 defendants that she had mentioned as far as pictures
17 and things like that and other people, those are all
18 people we anticipate testifying in this case.

19 Mr. Beck has something to add. I'm sorry.

20 THE COURT: Mr. Beck.

21 MR. BECK: I was just going to add that
22 the Marcantel and Santistevan is racketeering
23 activity that goes towards the enterprise, and we'll
24 have several cooperators come up and testify to
25 their participation in the Marcantel and Santistevan

1 conspiracy. So it would come in in a trial against
2 Mr. Andrew Gallegos, just as it would against
3 Mr. Edward Troup, because we have to establish the
4 enterprise. We have to establish the racketeering
5 activity. So those crimes will be talked about by
6 the cooperators in this case.

7 THE COURT: Well, that's been the
8 difficulty of the severance, is that given the
9 Government's charges in this case, the racketeering,
10 they can pick and choose what racketeering activity
11 they want to emphasize in the trial. So I'll deny
12 the motions to sever.

13 All right, Mr. Castle.

14 MR. CASTLE: Yes, Your Honor. During the
15 direct examination yesterday of Agent Acee, the
16 Government elicited testimony that my client
17 declined to talk to Agent Acee about Counts 1 and 2.
18 That's an improper comment on the right to remain
19 silent. And as a comment, a violation of the Fifth
20 Amendment. I didn't object to it at the time,
21 mainly for tactical reasons, because I didn't want
22 to emphasize it more and figured I could try to
23 clean it up on my cross as to various reasons why
24 someone might not want to talk to the police. And I
25 intend to do that today, but at the end of that,

1 what I would ask this Court to do, at a minimum, is
2 advise the jury that an individual's silence cannot
3 be used in using the appropriate language that's in
4 the instructions. And if I could, I would ask -- I
5 would prompt the Court when I would like that to be
6 said. I mean, we could have asked -- we could do a
7 mistrial, but I think given how much everybody has
8 done in this case, and worked, and how far we are,
9 that seems a bit Draconian. But I think some
10 measure should be given.

11 THE COURT: I don't think the instructions
12 have much except about testifying. So if you have a
13 minute, write on a yellow piece of paper what you
14 want, and I'll give it when you want it.

15 MR. CASTLE: And I'll show it to the
16 prosecution first.

17 MR. CASTELLANO: We would object to that,
18 Your Honor. The gist of the statements was that he
19 would rather go to prison than cooperate and give
20 information about those, about that information. So
21 it's a slightly different thing than telling someone
22 that you don't want to talk.

23 THE COURT: Well, I'm not going to comment
24 on the evidence, but I'll give the instruction. I
25 don't think we can give that too many times. So I

1 think that would be appropriate.

2 MR. SINDEL: Your Honor, on behalf of Joe
3 Lawrence Gallegos, we would also object as to the
4 comment and the testimony yesterday concerning the
5 fact that the co-defendants in this case had been
6 found guilty. I don't think that has any particular
7 relevance in this matter, and I think it's
8 prejudicial and it gives the jury an indication that
9 at least at one point in time a group of jurors made
10 a determination that there was a factual basis to
11 find beyond a reasonable doubt VICAR and RICO
12 counts.

13 THE COURT: Well, I don't have any quibble
14 with that. If you want to write out a limiting
15 instruction on that, I'd be glad to give it.

16 MR. SINDEL: Thank you, Your Honor.

17 MS. ARMIJO: At the break we need to talk
18 about the fire wall attorney.

19 THE COURT: All rise.

20 (The jury entered the courtroom.)

21 THE COURT: Good morning, ladies and
22 gentlemen. Good Friday morning. I think it's the
23 13th, as well, if I'm keeping track of days. Good
24 morning to you, and I hope we get a good Friday's
25 worth of work. I know some of you may stick around

1 for the weekend; some of you may be traveling. But
2 whatever, let's try to get a good day's worth of
3 work.

4 I appreciate the way you've gone about
5 your task, being here on time. I appreciate the
6 attorneys getting in here early and we got some
7 business taken care of. So I appreciate the way
8 everybody has gone about their tasks.

9 All right, Mr. Acee. I'll remind you that
10 you're still under oath.

11 Mr. Castle, if you wish to continue your
12 cross-examination of Mr. Acee, you may do so at this
13 time.

14 MR. CASTLE: Thank you, Your Honor.

15 THE COURT: Mr. Castle.

16 BRYAN ACEE,
17 after having been previously duly sworn under
18 oath, was questioned and continued testifying as
19 follows:

20 CONTINUED CROSS-EXAMINATION

21 BY MR. CASTLE:

22 Q. Agent Acee, yesterday you testified a bit
23 about one of the investigative techniques that the
24 FBI used was making some street buys from SNM
25 members. Do you recall that?

1 A. Yes, sir.

2 Q. And what you were doing was trying to buy
3 drugs from them and see if that could force someone
4 to perhaps give you some information and also to
5 arrest them for a crime. Would that be fair to say?

6 A. It was to charge them and try to develop
7 them as cooperators, yes.

8 Q. Were any street buys made with Billy
9 Garcia?

10 A. No.

11 Q. I want to talk to you a little bit about
12 what I think you've called as cooperators. There
13 have been a lot of different terms used for these
14 individuals over the years; is that right? Some the
15 FBI uses and some that they're street slang?

16 A. Yes, sir.

17 Q. In your investigation of the case, did
18 some of the witnesses that you talked to use more of
19 the street slang terms for what you have called
20 cooperators?

21 A. Like snitches or rats? Yes.

22 Q. Those are the terms they used?

23 A. Informants, snitches, rats, telling.

24 Q. Now, I think there is also a term that's
25 been used in recent years, which is incentivize

1 witnesses. Have you heard that before?

2 A. No, sir.

3 Q. That's a new one for you?

4 A. I may have heard it by one of the
5 attorneys, but it's not something I use.

6 Q. It's a mouthful, isn't it?

7 A. Yes.

8 Q. What term do you use, are you comfortable
9 with?

10 A. Doesn't matter to me.

11 Q. Is "cooperators" a term that you've been
12 using?

13 A. Yes.

14 Q. Now, I looked up last night in Webster's
15 dictionary what "cooperation" means, and it means
16 two or more people working together for the same
17 end. Would you accept that definition?

18 A. I accept that that's probably what the
19 dictionary said.

20 Q. It's not a test. But these individuals
21 that you all call cooperators are actually working
22 towards a different end than the FBI is, aren't
23 they, or often are?

24 A. I don't know that we have the same goals.

25 Q. Okay. Oftentimes your goal is to obtain

1 evidence and ferret out crime; right?

2 A. My goal is investigating, trying to
3 find -- sort out the truth in the matter.

4 Q. And oftentimes these people that are
5 called cooperators -- their goal is somewhat
6 different?

7 A. They're not FBI agents.

8 Q. Not a lot of them -- in fact, did any of
9 them just knock on your door or call you up if
10 they're going to be used as witnesses in this case?

11 A. No.

12 Q. Generally, when you deal with cooperators,
13 is there -- if they're facing a lengthy sentence, is
14 one of their goals to try to reduce that sentence
15 and get their freedom?

16 A. Yes.

17 Q. Sometimes they want, perhaps, other
18 material goods or money, things like that?

19 A. That's not uncommon.

20 Q. Do sometimes they cooperate so that their
21 family members don't get charged with a crime?

22 A. You know, what they're thinking at the
23 time I don't always know. But I imagine that could
24 be a concern with some cooperators where their
25 family members are involved in crime, as well.

1 Q. For example, I think there is a Javier
2 Alonso that's going to be a witness in this case; is
3 that right?

4 A. Yes.

5 Q. And did he get in some trouble at the
6 jail?

7 A. I'm not recalling that.

8 Q. Any kind of introduction to contraband?
9 Do you recall anything like that?

10 A. Since he's been cooperating?

11 Q. Before he cooperated.

12 A. Oh, I'm not sure.

13 Q. I might be confusing the people.

14 A. Perhaps. I'm not sure.

15 Q. I think you've talked a little bit about
16 some of the cooperators having attorneys that
17 represented them. Do you recall that?

18 A. Most do, yes.

19 Q. And those attorneys are either appointed
20 or hired to look out for what their client wants or
21 desires. That's what the attorney's job is?

22 A. Among other things, I believe that's
23 correct.

24 Q. And so when the attorneys are negotiating
25 reduced sentences or, you know, certain plea

1 bargaining with the Government in return for
2 testimony, are you treating them as if they're the
3 spokesperson for those cooperators?

4 A. There is a lot in that question, and I'll
5 try to break it down.

6 Q. Please do.

7 A. I don't believe the attorneys have a lot
8 of say-so in what the sentence will be. I think
9 that's up to the Court. There is a lot of
10 representation that the attorneys make. I prefer to
11 talk to the cooperators. Oftentimes I have to go
12 through the attorneys.

13 Q. Let's talk about that, about the
14 sentencing for a second. A lot of these people that
15 are cooperators were facing mandatory prison
16 sentences; is that fair?

17 A. Some of them are, yes.

18 Q. And under federal law, if you cooperate,
19 the Government can file a motion that then gets rid
20 of the mandatory requirement for a sentence and
21 allows for a lower sentence; is that right? Is that
22 your understanding?

23 A. My understanding is probably a little bit
24 limited, but I do understand there is, like, a 5K
25 reduction, a possibility of such, and that the

1 Government does provide some kind of documentation
2 in support of that.

3 Q. Okay. When you say "5K," what that is is
4 that's a section of what's called the sentencing
5 guidelines; is that right?

6 A. Yes.

7 Q. And what it does is, that if the
8 Government files that kind of motion, it gets rid of
9 the mandatory requirement of the sentence and allows
10 for a lower sentence; is that right?

11 A. My knowledge of it -- I'm not an attorney,
12 sir, as you know. But I understand there is what's
13 referred to as a 5K, and that the Government
14 presents some type of document outlining or
15 detailing that the person cooperated and that that's
16 submitted to the Court prior to discussions about
17 sentencing.

18 Q. This is an important tool that's used by
19 law enforcement in conjunction with the United
20 States Attorney's office to get people to provide
21 information and testify.

22 A. I think it is an important tool.

23 Q. Now, Agent Acee, a citizen who is accused,
24 such as all the defendants over here -- they can't
25 offer those, the same things that we've been talking

1 about -- money, freedom, motions to get lower
2 sentences -- to any witness without violating
3 federal law?

4 A. If I understand, the defendants can't?

5 Q. Right, citizens; yes. Any -- we can't
6 just go around and offer money to witnesses, can we?

7 A. You shouldn't. I guess you could.

8 Q. You guys can; right?

9 A. No. I cannot -- well, the way you're
10 saying it is not correct. There are circumstances
11 where money can be used, such as relocating a
12 witness for safety and other circumstances I'm happy
13 to talk about.

14 Q. Okay. Well, we will. You could offer
15 cash to a witness as a bonus or an award for
16 information they provide?

17 A. Yes and no.

18 Q. Can you tell us about the "yes" part
19 first?

20 A. It is possible for me to obtain FBI funds
21 to pay any person, as long as I can justify it and
22 it's within our policy in the Department of Justice
23 guidelines.

24 Q. And that happened here in this case?

25 A. I have used Department of Justice funds to

1 pay people who will testify in this case, but it's
2 not for their testimony.

3 Q. I understand. What is it for?

4 A. Well, the higher payments -- and there
5 haven't been very many. I can only think of two
6 people in this case out of the 30 or 40 informants
7 that I have that received more than a few hundred
8 dollars, and that primarily was to relocate them.

9 Q. Well, one guy got, I think, 40-something
10 thousand dollars; right? One of the cooperators?

11 A. You're speaking of Eric Duran, I believe,
12 and I think it was actually more than that, all
13 told, with relocation. And then he was awarded
14 \$25,000 for his part in the Marcantel conspiracies.

15 Q. Okay. So where we were starting was that
16 the FBI can do that; that's legal; right?

17 A. Yes, sir.

18 Q. But if any of us did that, that would be a
19 federal crime.

20 A. What crime would it be?

21 Q. Bribing a witness.

22 A. In that context, it would.

23 Q. So that's a tool that law enforcement can
24 use, but no criminal defendant can use.

25 A. I don't know if you can help pay someone

1 to relocate for safety later. I'm unaware of that.
2 But I understand the bribery part of that for
3 testimony.

4 Q. Well, let's get down to kind of more
5 basics. For a lot of the people who are going to
6 take the stand, they were given for at least a
7 period of time \$50 a month on their books; right?

8 A. On average, yes.

9 Q. That's not a lot of money to perhaps you
10 or I.

11 A. It is not.

12 Q. But for a person who is in jail, they
13 don't have any form of income, do they?

14 A. It's minimal. I think they can work for
15 the State in some context, but it's not much.

16 Q. But less than 10 cents an hour; right?

17 A. Probably not much. It might be a dollar.
18 I'm not sure.

19 Q. So why did you give them \$50 a month?

20 A. So that their families wouldn't have to.
21 A lot of them indicated their families were
22 struggling to send them any kind of money. And then
23 when I started asking what kind -- because I wasn't
24 sure how much money to give them. I didn't want to
25 give them a lot, but when I talked to the initial

1 members that I spoke with, their families would send
2 \$30 to \$60 a month so I just settled on about \$50.

3 Q. So did the FBI give the \$50 a month to
4 anybody who wasn't a cooperator?

5 A. We don't just pay people for nothing.

6 Q. Okay.

7 A. If I'm understanding --

8 Q. That's fine.

9 A. -- your question. They're pretty tight
10 with their budget, too.

11 Q. If the defense paid a witness for
12 something, we'd go to jail.

13 A. I don't know.

14 Q. Well, let's talk about cooperators. I
15 think some of the cooperators we've talked about --
16 I'm just going to list them off the top of my head.
17 Gerald Archuleta, Baby Rob Martinez, Leonard Lujan,
18 Eugene Martinez, Sammy Griego. You've talked to all
19 of them?

20 A. Yes, sir.

21 Q. Have any of them ever agreed to an
22 interview with any of the defense lawyers that
23 you're aware of?

24 A. Well, I know that Sammy Griego was
25 contacted. I don't believe he spoke, but I'm not

1 sure. The others I don't believe have. They all
2 have attorneys.

3 Q. And that's something that -- well, we'll
4 talk about contracts a little bit later. But you do
5 have contracts with cooperators; right?

6 A. I wouldn't characterize them as contracts.
7 We -- and I'm happy to explain the process if you'd
8 like.

9 Q. Well, it's a written agreement which sets
10 forth rules and what they're required to do?

11 A. There are rules, admonishments, yes.

12 Q. And part of those admonishments are that
13 they're required to cooperate with you and the FBI
14 and the U.S. Attorney's Office as far as coming in
15 and making statements and telling the truth; right?

16 A. Telling the truth is correct. Those other
17 things are not in the admonishments.

18 Q. One of the things that's not in the
19 admonishment is, say, for example, in the interests
20 of fairness and justice, you should make yourself
21 available to opposing counsel so they can ask you
22 questions, even in the FBI's presence?

23 A. Language like that is not in the
24 admonishments.

25 Q. And you've never encouraged any of your

1 witnesses to do that?

2 A. Do I encourage them to meet with the
3 defendants' attorneys?

4 Q. Yes.

5 A. No, I can't prevent them from doing it,
6 but I personally wouldn't encourage it.

7 Q. We have here in court what's called an
8 adversary system. Is that your understanding?

9 A. Yes, sir.

10 Q. And what we do here in this country is, we
11 believe that if both sides present evidence,
12 question witnesses, that we somehow could have a
13 fair result in the end; right?

14 A. Yes.

15 Q. But in the field, the FBI, in their
16 practice, doesn't encourage that same concept of
17 both sides getting to ask witnesses questions.

18 A. I don't bring defense attorneys to my
19 interviews.

20 Q. Unless, of course, they're representing
21 one of the cooperators; right?

22 A. I don't bring them, but --

23 Q. They come?

24 A. They show up. But I don't invite
25 attorneys with me when I'm out in the field

1 interviewing people.

2 Q. We talked about, I think you said, basic
3 investigative techniques and then also advanced; is
4 that right?

5 A. Yes, sir. I think I described them as
6 basic, or general, and then sophisticated.

7 Q. The FBI is authorized by law to request
8 and obtain search warrants; is that right?

9 A. Yes, sir.

10 Q. And you can go into people's houses and
11 search their houses and see if there is any evidence
12 there?

13 A. Yes.

14 Q. Or in the context of a prison, you can
15 probably even bypass search warrants and go in and
16 search individual cells to see if they have any
17 evidence of a crime in there; is that right?

18 A. For most part, unless the person is
19 represented.

20 Q. But that's something that the defense
21 can't do. We can't go and get a search warrant to
22 search one of your witness' cells to see if they
23 have evidence of a crime in there, or their homes.
24 That's just not something that citizens have a right
25 to do?

1 A. They're able to obtain a court order.
2 Citizens can't, but I believe the defense can obtain
3 a court order to search, and has.

4 Q. That's a new one on me.

5 A. Didn't that occur last week?

6 Q. I believe the Government asked for that.

7 A. I may be misunderstanding.

8 Q. The concept of wires that we talked about,
9 where you put some kind of device on a person and
10 then they go in and talk to someone and try to get
11 incriminating information. Do you recall that?

12 A. Yes.

13 Q. That's something that would be a violation
14 of federal law if the defendants' attorneys did?

15 A. Well, New Mexico is a one-party-consent
16 state, so I think there are circumstances where a
17 person can record another and it's lawful.

18 Q. That's under state law.

19 A. Yes.

20 Q. Federal law, it's called wire-tapping, and
21 it's a federal violation for a citizen to do it. In
22 fact, it's a violation if you do it on someone's
23 telephone without an order from the Court; right?

24 A. Well, there is a distinction that has to
25 be made. If it's consensual and one of the parties

1 is consenting, then it's lawful. If we're talking
2 about two people that are unaware, then yes, that
3 would be unlawful.

4 Q. You talked yesterday a little bit about --
5 one of the techniques is to tell people that if they
6 don't cooperate, they're going to be charged with a
7 crime. Do you recall that?

8 A. I don't think I said it that way.

9 Q. Okay. Well, give us your words.

10 A. When talking to SNM members, I introduce
11 myself, I get some kind of confirmation that they're
12 aware that the FBI is investigating a lot of the
13 members of their gang and that they have some hard
14 decisions to make. For example, last week when I
15 was up at the penitentiary, I spoke to every SNM
16 member up there and advised them of that, that we
17 were not finished arresting members of the SNM.

18 Q. Well, let's use a concrete example. When
19 you talked to Mr. Garcia here --

20 A. Yes, sir.

21 Q. -- Billy Garcia, you told him that you'd
22 like him to cooperate.

23 A. I did.

24 Q. And if he didn't, then he was going to be
25 charged?

1 A. I made it clear that we would be back.

2 Q. If I did that to a witness or any other
3 defense lawyer here went in and talked to a witness
4 and said, "If you don't cooperate with us, you're
5 going to be -- we're going to get you charged with a
6 crime," we'd get charged with a crime; right?
7 That's illegal for a citizen to do.

8 A. Yes and no. I mean, at the point a person
9 is a witness, they can't be intimidated. You know
10 those tactics better than I do in terms of talking
11 to witnesses. But at the time I spoke to
12 Mr. Garcia, he was not. He was a suspect living on
13 the streets.

14 Q. Okay. What I'm getting at -- and I'm not
15 trying to be critical; I'm just trying to point out
16 a distinction -- is that the FBI has certain powers
17 and authorities that are not shared by citizens.

18 A. I agree. That's clear.

19 Q. And one of those is to threaten a
20 witness -- or let's not use the word "threaten."
21 Tell a witness that if they don't cooperate, they're
22 going to be facing perhaps a life sentence.

23 A. I don't agree with that, no.

24 Q. I can do that?

25 A. No, I'm saying that I don't do that. You

1 just said the FBI can. I know that you have a long
2 list of witnesses, and I avoid them. I don't talk
3 to them and I don't threaten them.

4 Q. We'll come back to that in a minute. The
5 FBI in certain circumstances is even allowed to tell
6 us, the suspect, something that's not true to get
7 them to spill the beans.

8 A. Case law and our policy allows us to do
9 that.

10 Q. For example, sometimes there are two
11 people that are suspected of, let's say, a bank
12 robbery and you bring them in and you say -- you're
13 allowed by law to bring one of them into a room and
14 say, "Your buddy there already confessed," even
15 though the buddy never confessed; right?

16 A. Yes.

17 Q. Citizens and the lawyers who represent
18 them -- we're not allowed to lie to witnesses like
19 that without committing an ethical violation at the
20 bare minimum. Or do you not feel comfortable
21 commenting on attorney ethics?

22 A. I don't.

23 Q. Okay.

24 A. But citizens can --

25 Q. Citizens do lie.

1 A. -- obligated to the same standard I
2 believe you are.

3 Q. Right. But the criminal defendants can't
4 legally go out and contact witnesses in a case like
5 this; right?

6 A. They can't intimidate witnesses.

7 Q. And you have no evidence that Mr. Garcia
8 has ever attempted anything like that with any of
9 the witnesses since the day he was charged.

10 A. I have heard --

11 Q. I said evidence, sir.

12 A. Well, statements from people can be
13 evidence. Do you want me to comment on that?

14 Q. Well, anything that you've put in any
15 reports?

16 A. I don't write all the reports, so I'm
17 pausing because I'm trying to recall the other
18 reports that I have read.

19 Q. Sir, what I'm asking you is: Is there a
20 single page in the 60,000 pages that have been
21 provided to the defense, a single page that says
22 anything about Billy Garcia contacting any witness,
23 threatening any witness or tampering with a single
24 witness in this case since the moment he was
25 charged?

1 A. I need time to review the reports.

2 Q. We're going to be here for a while.

3 You talked about cooperators. I want to
4 talk to you a little bit about people that don't
5 cooperate. There are many reasons people don't
6 cooperate over the years when you've talked to
7 witnesses; is that right?

8 A. Yes.

9 Q. Sometimes they don't want to do it because
10 they're guilty?

11 A. That could be true.

12 Q. Sometimes they don't want to talk to you
13 because they're afraid of the FBI, like that one
14 juror we heard from.

15 A. Somebody was afraid of the FBI?

16 Q. Or police, I think.

17 A. Perhaps.

18 Q. Sometimes they do it because they're
19 afraid?

20 A. Yes.

21 Q. In this case, did you come across a number
22 of people who were worried about, if they
23 cooperated, that their families would be in danger?

24 A. Yes.

25 Q. Then some people -- when we talked about

1 cooperation, in your years of experience, have you
2 come across people who say they want to cooperate
3 but really what they want to do is shift the blame
4 from themselves to someone else?

5 A. That's a tough one to answer. I mean,
6 I've had over the years defendants debrief and
7 minimize their involvement or point fingers at other
8 people. Those sort of things have happened.

9 Q. Because they want to get out of their full
10 responsibility?

11 A. Probably.

12 Q. Some cooperators will cooperate even
13 though there is a danger to their families; is that
14 right?

15 A. Yes.

16 Q. And they'll do so often to get a more
17 lenient sentence for themselves.

18 A. I believe that that's in their interest,
19 and something that any person in that circumstance
20 hopes for.

21 Q. So these informants make efforts to
22 cooperate to lower their sentence even though their
23 own family members might be put in danger?

24 A. The moment they cooperate, that happens.

25 Q. When we talked yesterday, I believe you

1 indicated that one of the stages of your
2 investigation was to take more of an historical view
3 of the SNM?

4 A. Yes, sir.

5 Q. And that was to go out and look at what I
6 think you called cold cases?

7 A. Yes.

8 Q. So those would be cases that no entity had
9 ever charged anyone with, a crime?

10 A. Yes, sir.

11 Q. Would that also include -- did you also
12 look at cases where the State had actually
13 prosecuted people for those crimes?

14 A. Yes.

15 Q. And that's because -- just because the
16 State has prosecuted someone doesn't mean the
17 federal government can't prosecute them, as well?

18 A. Under the racketeering statutes, I believe
19 that the federal government could also use some of
20 those convictions.

21 Q. So for example, if someone in the SNM had
22 committed a murder as part of being an SNM member,
23 part of racketeering activities, they could get
24 prosecuted in state court and get one sentence and
25 then federal court and get another sentence?

1 A. Yes. I mean, it's not that simple. But
2 yes, those overt acts need to be within a certain
3 time period and there are some other restrictions
4 there. But generally I certainly looked at all of
5 that past conduct.

6 Q. Right. Because you weren't looking at it
7 with the idea that "We can't prosecute because that
8 person might have already been prosecuted in state
9 court."

10 A. I was looking to arrest as many SNM
11 members as I could.

12 Q. So for example, a guy like Gerald
13 Archuleta -- he's a pretty bad guy; right?

14 A. Yes.

15 Q. He's committed some really horrible
16 things.

17 A. He's committed some murders and other
18 crimes.

19 Q. And there was some discussion yesterday
20 about how he was only charged with an assault that
21 carried a maximum of three years?

22 A. Yes, sir, I think because it was the
23 attempt, and that was the maximum.

24 Q. But you would agree with me that he could
25 have been charged with all those horrible things

1 that he did as an SNM member in federal court with a
2 federal racketeering indictment like the ones these
3 defendants are facing?

4 A. I was working on a racketeering conspiracy
5 case on Mr. Archuleta, and I personally was working
6 on it, where other instances I'd assigned other
7 agents; we have a team.

8 Q. If you had your way, he would have faced
9 those charges?

10 A. I mean, I was -- before I ever spoke with
11 him, I personally was working on his overt acts, and
12 I had a lot of them.

13 Q. I want to direct your attention basically
14 to the two homicides that happened in 2001, in March
15 of 2001. When those murders occurred, did the New
16 Mexico State Police investigate those murders?

17 A. Yes, sir.

18 Q. Did they collect physical evidence?

19 A. Yes.

20 Q. Did they collect biological evidence for
21 DNA testing?

22 A. Where they could, yes.

23 Q. Did you find in your -- well, let's back
24 up a little bit. When you took over the case in
25 March 2015, did you go back and collect all the

1 reports that you could locate concerning the 2001
2 murders?

3 A. Yes. Not quite then, because we were
4 working on the -- mitigating the threats to
5 Marcantel and Santistevan. But eventually we did,
6 yes.

7 Q. And did you look at the physical evidence
8 that was collected?

9 A. I have.

10 Q. So you're familiar with what was
11 available?

12 A. I am. I'm not prepared for a test on it.

13 Q. Just let me know, because I'm not trying
14 to trick you here. If you need any documents, we
15 could provide them. Just let us know.

16 In your review of those materials, did it
17 appear that the New Mexico corrections officials,
18 namely the gang officers -- they listened to phone
19 calls at the prison to see if they revealed anything
20 that might indicate who had committed the 2001
21 murders?

22 A. I think they made an attempt. They also
23 shut the phones off, though, so I think that didn't
24 help that attempt. But yes.

25 Q. Well, all the calls -- let's just talk a

1 little bit about this. When an inmate makes a call
2 at the prison, it's recorded.

3 A. Yes, sir.

4 Q. And in New Mexico, that's kept for about
5 10 years; or it's 10 years, minimum 10 years?

6 MR. CASTELLANO: Objection, foundation.

7 Q. Are you aware?

8 THE COURT: Well, if he knows.

9 A. I think presently that's the standard,
10 yes.

11 BY MR. CASTLE:

12 Q. So in 2001, after the murders happened,
13 it's your understanding that the New Mexico State
14 Police -- or I'm sorry, the Department of
15 Corrections gang officers could go back and listen
16 to see if there were any calls being made out in the
17 days before the murders.

18 A. They could have done that.

19 Q. And that's important because often, in
20 your history of investigating these cases, what
21 you'll often find is that inmates that know that a
22 murder is going to occur will call their loved ones
23 and say, for example, "I'm going to be locked down
24 for a while," and things of that nature?

25 A. I have seen that happen.

1 Q. Because after a murder in prison happens,
2 I think you already testified they lock everything
3 down for a while.

4 A. Yes.

5 Q. And there's no communication out?

6 A. Correct.

7 Q. There is no commissary that you can buy?

8 A. I'm unsure as to that, but everything is
9 locked down.

10 Q. And it could be months that they're locked
11 down?

12 A. I think individual gangs can be locked
13 down that long. I don't know that the whole
14 facilities, all the inmates, are locked down that
15 long.

16 Q. Did you find in your review of the
17 materials any evidence that indicated that
18 Mr. Garcia here had made any phone calls that were
19 preserved because they had some evidentiary
20 importance?

21 A. No.

22 Q. Does the Department of Corrections also
23 collect mail that inmates -- or copy, I guess, mail
24 that inmates send out to people other than lawyers?

25 A. Not all the inmates. Just the STGs they

1 do.

2 Q. Okay. Those are the gangs?

3 A. Yes.

4 Q. When you say "STG," that means security
5 threat group. That's a mouthful for the word
6 "gang."

7 A. It is. And to be clear, the security
8 threat groups are the ones that have been
9 documented. And there is a process where, I'll say,
10 the institution recognizes them as a threat. And in
11 my experience, STGs are the gangs.

12 Q. Okay. So historically, it would be
13 something like the Aryan Brotherhood or -- can you
14 just name a few?

15 A. The Aryan Brotherhood, the Nazi Lowriders,
16 Black Guerilla Family, Nuestra Familia, SNM, Los
17 Carnales, Sureños.

18 Q. Going back to the mail, Corrections will
19 copy mail that they think has some kind of
20 suspicious nature to it; is that right?

21 A. Yes.

22 Q. And then review it and provide it to
23 investigators if necessary?

24 A. Yes.

25 Q. And that's happened?

1 A. It has.

2 Q. Did the New Mexico Corrections folks also
3 take photos of the crime scenes and video of the
4 crime scenes?

5 A. I believe the majority of the photo and
6 video was by the State Police.

7 Q. Okay. By the State Police. I'm sorry.

8 A. Yes, sir.

9 Q. Thank you. In your review of the case of
10 the 2001 murders, did the FBI focus -- or were they
11 interested in the 2001 murders prior to you getting
12 involved?

13 A. Yes.

14 Q. And did that start as early as 2001?

15 A. Yes.

16 Q. In fact, I think -- correct me if I'm
17 wrong -- the SNM was actually a focus of the FBI as
18 early as 2000?

19 A. Yes.

20 Q. It might have even been earlier?

21 A. I imagine that -- I'd like to think the
22 Bureau started looking at them after the riot. I
23 just don't have files that old.

24 Q. We all throw things out sometime.

25 A. Yes.

1 Q. Did the FBI agents before you -- are you
2 aware that they interviewed some sources as early as
3 2001 about the 2001 murders?

4 A. Yes.

5 Q. And did they work with state and local law
6 enforcement to investigate these murders through the
7 years?

8 A. Through the years, yes.

9 Q. It was kind of an on-and-off thing?

10 A. I mean, I'm going to be terribly critical
11 of my colleagues, but I don't believe the SNM was
12 adequately worked until Agent Roundy started working
13 it in about 2008.

14 Q. Let's talk about the 2001 murders
15 specifically. Has the FBI developed any new
16 forensic evidence since you took over concerning the
17 2001 murders? What I mean by that is, evidence
18 collected from the crime scene that might point
19 towards who did it.

20 A. No. Information or items that have been
21 sent to a lab cannot then be sent to the FBI Lab.
22 But to answer your question pointedly, no.

23 Q. Are you aware, at least in your
24 investigation, that in late 2001, after a thorough
25 review of the evidence, that District Attorney

1 Susana Martinez --

2 MR. CASTELLANO: Objection, Your Honor.

3 May we approach.

4 THE COURT: You may.

5 (The following proceedings were held at
6 the bench.)

7 MR. CASTELLANO: The objection is hearsay.
8 Defense counsel is attempting to elicit statements
9 made by another person or another office, and so
10 that information is not admissible hearsay. It's
11 also not relevant.

12 MR. CASTLE: I'm offering it for a
13 nonhearsay purpose, to show why the FBI took over
14 the investigation, Your Honor, because the State was
15 declining.

16 MR. CASTELLANO: And took over the
17 investigation at what point? Obviously there was a
18 critical look at this.

19 THE COURT: Well, do we need to go into
20 great detail about it? Can you just lead him and I
21 instruct the jury they're not to consider it for the
22 truth of the matter, but they are to consider it for
23 why the FBI took that over?

24 MR. CASTLE: That's fine.

25 THE COURT: Just lead him and get through

1 it quickly.

2 MR. CASTELLANO: Defendants' Exhibit, the
3 declination letter, if they move to admit that
4 letter, I'll be objecting on hearsay, as well.

5 MR. CASTLE: I'm not offering it.

6 (The following proceedings were held in
7 open court.)

8 THE COURT: You're going to hear Mr. Acee
9 talk about some statements that were made by a third
10 party. You're not to consider them for the truth of
11 the matter, but you can consider them for the
12 reasons that the FBI took over the investigation.
13 So that's how you can consider it, but not for the
14 truth of the matter.

15 BY MR. CASTLE:

16 Q. Agent Acee, do you want me to repeat the
17 question?

18 Is your microphone not working? Do you
19 want a hand-held mic? Tom Jones for us older
20 people, or maybe Bruce Springsteen for the
21 middle-aged folks.

22 A. I don't -- I'm aware that I believe there
23 was a declination by the --

24 Q. I think, let me -- the parties agree that
25 I had to ask it in a certain way. So let me just

1 ask it this way. Are you aware that in 2001, late
2 2001, that then-District Attorney Susana Martinez
3 declined prosecution of the 2001 murders?

4 MR. CASTELLANO: Objection, Your Honor.
5 That's not the agreement of the parties regarding
6 the question. And also, it wasn't Susana Martinez.

7 THE COURT: Well, I'll allow the question.
8 Overruled.

9 A. That office declined to prosecute.
10 BY MR. CASTLE:

11 Q. And then through the years, then the FBI
12 was mainly the ones that were focused on the 2001
13 murders?

14 A. I don't know if the State Police tried to
15 keep it open in their cold case unit, but the FBI --
16 my review of the files is that the FBI showed
17 interest in it and documented aspects of that murder
18 based on the State Police reports and then some
19 informants that they developed.

20 Q. I think a few minutes ago you said that in
21 2008 FBI Agent Roundy undertook a robust analysis of
22 the 2001 murders?

23 A. Agent Lance Roundy basically worked alone
24 on that case, in terms of -- he didn't have a team
25 of agents like I'm fortunate to have now. And he,

1 in my opinion, did the best that he could and he put
2 a lot of work in on it.

3 Q. And he worked with a task force.

4 A. He was assigned to the Southern New Mexico
5 gang task force, so he had a gang caseload.

6 Q. And are you aware that in 2009, Agent
7 Roundy presented the 2001 murders to the United
8 States Attorney's office and that they declined to
9 prosecute?

10 MR. CASTELLANO: Objection, calls for
11 hearsay.

12 THE COURT: Well, the same instruction to
13 the jury. You can't consider these for the truth of
14 the matters, but you can consider them for why the
15 FBI did what it did and why the U.S. Attorney's
16 Office did what it did. But that's about it.

17 A. If I heard you correctly, sir, you said
18 2009?

19 BY MR. CASTLE:

20 Q. Yes.

21 A. Do you have the year right?

22 Q. Well, do you recall testifying about this
23 on February 26 of this year?

24 A. I testified and answered a lot of your
25 questions over time, but I'm not sure that I'm

1 familiar with the 2009. I'm familiar with 2015.

2 Q. Would it help you to take a look at that
3 transcript?

4 A. Sure.

5 Q. Okay. We'll come back to it. Do you
6 recall the following questions and the following
7 answers? The question was: "Because it was tried
8 in 2009 and it was rejected by the United States
9 Attorney's Office, wasn't it?"

10 And the answer is: "Did they want a RICO?
11 I think they were just charging -- trying to charge
12 for a specific couple of homicides."

13 "Question: But the point being the
14 Department of Justice turned it down."

15 And then your answer was: "The United
16 States Attorney's Office for the District of New
17 Mexico turned it down."

18 Does that sound familiar?

19 A. It does. I just don't know if we're
20 talking about the same thing.

21 Q. Okay.

22 A. And I'm not trying to be difficult. We
23 may not have been understanding each other.

24 Q. Well, are you thinking of a different
25 time?

1 A. I am.

2 Q. Okay. We'll get to that in a minute.

3 A. And I can conduct a review of our files,
4 too, if you'd like, and be more precise.

5 Q. I'd appreciate it. And I know you've been
6 cooperative in doing that in the past.

7 A. Yes, sir.

8 Q. In fact, I think yesterday -- and I thank
9 you here on the record -- that after I indicated
10 that we didn't have a picture of Mr. Angel Munoz,
11 you found one and sent it to us.

12 A. I had it in my pocket and I passed it down
13 to the attorneys to try to get to you.

14 Q. Some people keep keys or wallets in their
15 pockets. You keep pictures of Angel Munoz.

16 A. That's weird. That sounds terrible,
17 but --

18 Q. No, no.

19 A. But it's hard to find a photo of him, so I
20 thought it might come up.

21 Q. Agent Acee, it's just nice to have a laugh
22 every once in a while, isn't it?

23 A. I agree.

24 Q. Over the years, the FBI has developed a
25 number of cooperators who I think have been

1 classified as sources; is that right?

2 A. Yes.

3 Q. And does that have particular meaning for
4 the FBI? What is considered a source?

5 A. Everybody can be a source.

6 Q. So if an average citizen, for example,
7 witnesses a crime -- and we'll use the bank robbery
8 situation again -- they witness a crime and they
9 stay behind and talk to an FBI agent, that would be
10 considered a source?

11 A. Yes.

12 Q. Now, by 2009 would I be correct that the
13 FBI had opened a couple of sources in regards to the
14 2001 murders?

15 A. Yes.

16 Q. Now, is opening a source different than
17 just being a source?

18 A. Definitely.

19 Q. Okay. Tell the jury what the difference
20 is.

21 A. Anybody can be a source, sources of
22 information; they're all over the place. The
23 newspaper is a source of information. Opening a
24 source is where the FBI actually goes through the
25 process of formalizing that person as a confidential

1 human source. They're given a number and a code
2 name.

3 Q. And that would be someone that's a
4 cooperator?

5 A. The cooperators can be opened or they
6 don't have to be. A cooperator is someone who's
7 agreeing to cooperate with the Government. That
8 doesn't necessarily mean the FBI opens them as an
9 informant. I often do and did for accounting
10 purposes, better paper-keeping.

11 Q. So in the bank robbery instance, if the
12 citizen tries to describe who the bank robber is,
13 they wouldn't be opened as a source?

14 A. Not unless they knew a whole bunch of bank
15 robbers and could solve some other bank robberies.
16 Otherwise, they're just a witness or a source.

17 Q. On the other hand, if somebody in jail
18 reaches out to the FBI and says, "Hey, I have some
19 information about that bank robbery; I'd like to
20 work with you and get a little love thrown my way,"
21 is that something that might be opened as a source?

22 A. They could be.

23 Q. Now, and so the two open sources by that
24 time, in 2009, were Leonard Lujan and Frederico
25 Munoz?

1 A. Correct.

2 Q. But you had other sources that were not
3 opened as sources.

4 A. At that time, I was working the Juarez
5 Cartel. But the FBI had those two sources open, and
6 it sounds like -- it looked like, from my review of
7 the file, that they would sometimes accompany state
8 or local officers that had sources.

9 Q. As far as the witnesses in this case, I'm
10 just going to limit it to the people that the
11 Government has indicated they're going to call.

12 A. Sure.

13 Q. A person by the name of Robert Boo-Boo
14 Lovato. Did he provide information to the FBI in
15 the beginning of 2011?

16 A. Yes.

17 Q. And then was current cooperator Leroy
18 Smurf Lucero -- had he provided information to the
19 FBI beginning in 2011, as well?

20 A. Yes.

21 Q. And information concerning the 2001
22 murders.

23 A. Among other things.

24 Q. Let's talk between March 2015. That's
25 when you got involved with the SNM investigation?

1 A. Yes, sir.

2 Q. That was the starting point.

3 A. It was.

4 Q. That's pretty much taken over your life
5 since then; would that be fair to say?

6 A. Probably both of us.

7 Q. Okay. Well, I wasn't around in March
8 2015, but --

9 A. Yes, it has.

10 Q. And that was when you started the
11 operation that led to the charges that these
12 defendants are facing?

13 A. Yes, sir.

14 Q. And you did that in coordination with the
15 United States Attorney's Office?

16 A. Yes.

17 Q. All are under this umbrella that's called
18 the Department of Justice?

19 A. The FBI and the U.S. Attorney's Office
20 fall under the Department of Justice.

21 Q. And other agencies, as well?

22 A. Yes.

23 Q. Do you know of a person by the name of
24 Jack Burkhead?

25 A. Yes.

1 Q. And who is he?

2 A. He's the chief criminal deputy for the
3 United States Attorney's Office for the District of
4 New Mexico.

5 Q. What is meant by the chief criminal
6 deputy?

7 A. There is the U.S. Attorney, who is
8 appointed by the president. He or she has a first
9 assistant, and then they have a chief over the civil
10 branch or the criminal branch. In this case,
11 Mr. Burkhead is over the criminal branch.

12 Q. And are you aware that the United States
13 Attorney's Office was presented the 2001 murders for
14 potential indictment by the FBI in 2015?

15 A. Yes. I think it was actually presented in
16 '14, but yes.

17 Q. Okay. So they presented the information
18 in 2014, but a decision was made in 2015?

19 A. I think the decision was made almost right
20 away, but it just wasn't documented for a while.

21 Q. And are you aware that in March 2015,
22 almost the exact time that you were beginning your
23 work, that the United States Attorney's Office
24 reviewed the evidence and declined to prosecute on
25 the 2001 murders?

1 A. I did learn that. I didn't know it at the
2 time I opened my case. I learned of that about a
3 year later.

4 Q. I want to show you what's been marked as
5 Defendants' Exhibit Q1.

6 MR. CASTLE: Sorry. Human difficulties
7 here, not technical.

8 Q. I'll show you what's been marked as
9 Defendants' Exhibit Q3. Will you take a look at
10 that? Do you know what that exhibit is?

11 A. Yes.

12 Q. What is it?

13 A. It's a letter from the United States
14 Attorney's Office, specifically Mr. Burkhead,
15 addressed to Agent Roundy, who's an FBI agent. It's
16 what we call declination letters. It's a letter
17 declining to prosecute the Frank Castillo and
18 Rolando Garza homicides.

19 MR. CASTLE: Your Honor, at this time I'd
20 move for the admission of Exhibit Q3.

21 THE COURT: Any objection, Mr. Castellano?

22 MR. CASTELLANO: No objection, Your Honor.

23 THE COURT: Any from the defendants?

24 All right. Defendants' Exhibit Q3 will be
25 admitted into evidence.

1 (Defendants' Exhibit Q3 admitted.)

2 MR. CASTLE: May I publish that to the
3 jury?

4 THE COURT: You may.

5 BY MR. CASTLE:

6 Q. I'm not sure you can read it all. You
7 probably can, because you've got the original over
8 there.

9 MR. CASTLE: With the permission of the
10 Court and counsel, I'm going to go to different
11 sections, and I'd like to have it highlighted, if
12 that's possible, so we could look at it more
13 clearly.

14 THE COURT: You may.

15 BY MR. CASTLE:

16 Q. First of all, what's the date of this
17 letter? Is it March 26, 2015?

18 A. Yes, sir.

19 Q. And there is an FBI -- well, does it say
20 it's regarding the Frank Castillo and Rolando Garza
21 homicides?

22 A. Yes.

23 Q. And those are the two murders that
24 Mr. Garcia is charged with; right?

25 A. Counts 1 and 2, yes.

1 Q. Along with some other defendants. And
2 there is an FBI file number under there. What is
3 that file? What is that for?

4 A. Every investigation the FBI undergoes has
5 a corresponding file number, and that's Agent
6 Roundy's file number for his SNM Gang investigation.

7 Q. And did you inherit that?

8 A. I assigned it to Agent Stemo, one of my
9 partners. But yes, we have.

10 Q. Now, in the first sentence, does it state,
11 "This letter will serve as notification to you that
12 the United States Attorney's Office is declining
13 prosecution of the above-referenced matter due to
14 insufficient evidence"? Does it say that?

15 A. It does.

16 Q. Then the next line says, "Please notify
17 the appropriate individuals within your agency of
18 our decision."

19 A. It also says that.

20 Q. But you didn't get notified; right?

21 A. No.

22 Q. Not for a year.

23 A. I wasn't notified. I found this letter.

24 Q. You found this letter about a year later,
25 you said?

1 A. Yes, sir, give or take. Sometime later.

2 Q. It's not something you documented the date
3 on. That's not something normally you do, is
4 document when you find something?

5 A. No. I'm able -- because of the
6 circumstances of finding it, I'm able to tell you
7 exactly when I found it. Not as I sit here. I'd
8 need to review my files. But I could find out.

9 Q. I think you testified previously you found
10 it in late 2015 to early 2016?

11 A. I think early 2016.

12 Q. 2016, I'm sorry.

13 A. Yes, 2016.

14 Q. Well, I'm just going to highlight certain
15 parts. You had an opportunity to review this letter
16 on a couple of occasions before today; is that
17 right?

18 A. Yes, sir.

19 Q. The letter indicates, among other things,
20 that, "In particular, as we previously discussed at
21 length a federal prosecution of these homicides
22 would in large part hinge on the testimony of former
23 SNM member Leonard Lujan."

24 A. You read that correctly.

25 Q. And when here it says "a large part," that

1 doesn't mean that's the only evidence; it's just
2 that that was a key part of the analysis?

3 A. At that time, I believe it was.

4 Q. And it would have been FBI policy that
5 Agent Roundy would have shared anything with the
6 U.S. Attorney's Office that he collected that was
7 relevant to a decision to make -- whether or not to
8 indict the 2001 murders; is that right?

9 A. No, I mean, it's not policy, the way you
10 stated it. But if you want the U.S. Attorney's
11 Office to take interest in your case and prosecute
12 it, you should share all the important parts with
13 them.

14 Q. You don't have any reason to believe that
15 Agent Roundy didn't?

16 A. No, he was very aggressive about trying to
17 get it prosecuted.

18 Q. So even though this letter only talks
19 about Leroy Lucero --

20 A. Leonard Lujan.

21 Q. What's that? I'm sorry. Leonard Lujan.
22 I'll get those confused. So if you could help me,
23 just because of the double L's, I'd appreciate it.

24 A. Sure.

25 Q. Even though this letter talks only about

1 Leonard Lujan, the U.S. Attorney's Office would have
2 had access to the other statements of other
3 individuals such as Freddie Playboy Munoz, Robert
4 Boo-Boo Lovato and Leroy Smurf Lucero?

5 A. You know, I wasn't present for this, and
6 I'm not sure what was represented. But I'm
7 definitely comfortable saying that Agent Roundy was
8 very passionate about getting this prosecuted. He
9 was very aggressive about it. And the fact that
10 this went all the way to Burkhead shows that.

11 Q. Okay. The letter also goes on and
12 indicates that based on discussions with AUSA
13 Burkhead, Lujan changed his mind and decided not to
14 cooperate after approximately seven years of
15 cooperation. Do you see that?

16 A. I do.

17 Q. And after you got this letter in your work
18 on this case, did you look to see if there was any
19 documentation in which it was documented that
20 Mr. Lujan had indicated he didn't want to cooperate
21 anymore?

22 A. I'm not aware of any documentation. And
23 I've also asked Mr. Lujan about that statement.

24 Q. And Mr. Lujan told you, no, he's never
25 wavered?

1 A. Right.

2 Q. So Mr. Lujan disputes the accuracy of that
3 statement that's made by Mr. Burkhead?

4 A. Yes.

5 Q. The letter also says that Mr. Lujan has a
6 history of malingering. Do you recall that?

7 A. The letter does say that.

8 Q. Now, is malingering kind of a fancy word
9 for saying someone has a history of faking or
10 feigning or exaggerating physical or psychological
11 symptoms for personal gain?

12 A. Yes.

13 Q. That's even a fancier explanation of
14 malingering. But how would you describe
15 malingering?

16 A. I listened to your definition yesterday
17 and it matches today's. And I actually learned
18 something new. I couldn't -- I've never looked up
19 the definition and I wasn't exactly sure what that
20 would have meant.

21 Q. I think we just got that definition out of
22 that medical report that we got.

23 A. Yes, sir.

24 Q. So is that something that we can accept as
25 the definition?

1 A. I believe so.

2 Q. So when this letter says Mr. Lujan has a
3 history of malingering, in essence it's a history of
4 being dishonest, at least in one area of his life?

5 A. That's what Mr. Burkhead is writing in
6 this letter.

7 Q. And in your investigation, you have found
8 that Mr. Lujan has malingered medical conditions
9 over the years; is that right?

10 A. He's told me that.

11 Q. And mental health conditions?

12 A. Yes.

13 Q. The letter also indicates that Mr. Lujan
14 had received past consideration for his cooperation.
15 Do you see?

16 A. I do see that.

17 Q. And are you aware of what past
18 consideration -- or at least consideration that he
19 had requested and received prior to March of 2015?

20 A. I think he received -- one time he
21 received \$500, if I remember correctly. I'm
22 assuming that's what he's referring to, because I'm
23 not aware of any other...

24 Q. Do you know when he received that?

25 A. I don't.

1 Q. Do you know who gave it to him?

2 A. I assume Agent Roundy. But to be clear,
3 I'm guessing right now. I'm not certain.

4 Q. When Mr. Lujan first came forward, it was
5 in 2007; is that right?

6 A. I think that's -- I'm only hesitating
7 because I assume you want to know when he came
8 forward to any kind of law enforcement.

9 Q. Right.

10 A. 2007 may have been the earliest.

11 Q. And that was when he was trying to get, I
12 guess, a better deal for his role in the murder of
13 Felix Martinez?

14 A. I imagine he was interested in a better
15 deal. What I'm picturing in my mind is the
16 transcripts from 2007 where he's giving a statement
17 to, I believe, Detective Lewis from the Albuquerque
18 Police Department.

19 Q. Is that the transcript that I perhaps was
20 quoting from yesterday in my opening statement where
21 he's told that he has to give something more in
22 order to get a better result?

23 A. Perhaps.

24 Q. So this statement here in this letter
25 about his request for past consideration could have

1 been a reference to that, as well?

2 A. Yes.

3 Q. Now, it also talks about his demands for
4 future consideration. Do you see that?

5 A. Yes.

6 Q. In your investigation, what was Mr. Lujan
7 requesting to get in the future as some kind of a, I
8 guess, benefit?

9 A. I'm not sure.

10 Q. Okay. You've looked, and you haven't been
11 able to locate information about that?

12 A. Nothing is jumping out at me as I sit
13 here.

14 Q. But you don't dispute Mr. Burkhead's
15 statement here that he had not made any demands for
16 future consideration?

17 A. That appears to be Mr. Burkhead's take on
18 that. I know that Lujan disagrees with some of
19 this. And I'm not calling anyone a liar. I'm not
20 sure --

21 Q. But this letter was to the FBI; right?

22 A. Yes.

23 Q. And the FBI didn't write a letter back
24 saying, "Wait a second, Mr. Burkhead. There is some
25 stuff in here you need to correct. This is wrong.

1 This is not accurate."

2 A. FBI agents don't write letters back to the
3 chief criminal deputy telling him where he's wrong.

4 Q. There is a hierarchy there?

5 A. There is. If we want to push back, we
6 have to have the Special Agent in Charge perhaps go
7 over there and talk to them.

8 Q. So then it goes on, the letter says -- it
9 talks about Mr. Lujan's demands as a quid pro quo.
10 What do you understand that to be?

11 A. He wants to trade one for one, tit for
12 tat. But I don't know what that's referring to.

13 Q. When you received this letter in late
14 2015, early 2016, did you provide a copy of that to
15 the U.S. Attorneys?

16 A. To be clear, I didn't discover this
17 letter -- it was definitely in 2016. It couldn't
18 have been in 2015, because the indictments were
19 December of 2015. So I found the letter in 2016 in
20 response to a defense motion for us, the FBI, or a
21 court order, perhaps, to have the U.S. Attorney's
22 Office, I believe the words were "put eyes and hands
23 on every document." So myself and other FBI agents
24 loaded up all of our files, brought them to the U.S.
25 Attorney's Office located next door, and provided

1 them to the assistant United States Attorneys on
2 this case.

3 Q. That was the result of the defense
4 identifying some files that the -- file numbers, I
5 guess, that the FBI had opened on SNM
6 investigations, and provided those to you all;
7 right?

8 A. I believe that had something to do with
9 it, yes.

10 Q. So you obtained those files and you, in
11 fact, found more information that was relevant to
12 2001 matters, is that fair to say, including this
13 letter?

14 A. I don't know if I agree with that.
15 Because I've -- I thought our name search, our
16 various name searches, covered everything; but I
17 don't think anybody asked me what I thought. So we
18 turned over -- and I think in the discovery one of
19 the reasons there are so many documents is because
20 we have turned certain documents over three times.

21 Q. Okay. But in any event, you turned this
22 over to the U.S. Attorney's Office in 2016?

23 A. Yes, sir.

24 Q. And you're aware that it wasn't ever given
25 to the defense until approximately two weeks ago,

1 after the defense had subpoenaed some U.S. Attorneys
2 and issued some subpoenas to produce; is that right?

3 A. I think you yelled at me a little bit
4 about that a couple of weeks ago in here.

5 Q. Well, I don't think I yelled at you, but I
6 think we...

7 A. Fair enough. You informed me of that with
8 some passion.

9 Q. Okay. Everybody has to have some fun.
10 You know, without going through all the
11 letter, you were here for the opening statements; is
12 that right?

13 A. Yes.

14 Q. And when we were doing our PowerPoint
15 slides, talking about this letter, and put out some
16 exact quotes, those exact quotes are in this letter;
17 is that right? You didn't notice anything that was
18 misleading?

19 A. I think with regard to this letter, those
20 slides were accurate.

21 Q. Just one thing I do want to highlight. If
22 we could go to page 2 -- I'm sorry, page 1 -- do you
23 see that Mr. Burkhead wrote, "He is quite simply
24 unusable as a witness," and then he goes on?

25 A. Yes.

1 Q. Going back to the concept of informants or
2 cooperators, when you're interviewing one of these
3 individuals, is it -- well, if they're trying to
4 leverage their information for a reduced punishment,
5 in that kind of situation, do you interview them
6 differently than, say, as an eyewitness to a crime?

7 A. Yes.

8 Q. And when you do so, you're a bit more
9 suspect about the information they're giving you,
10 other than, say, a citizen who is just doing their
11 duty?

12 A. I treat citizen witnesses and defendants
13 differently in the interview, yes. I'm more suspect
14 and I'm more confrontational in a defendant
15 interview.

16 Q. Well, not all these cooperators were
17 defendants; right? Some of them --

18 A. At one time or another they were
19 defendants. But in this case, not -- well, the
20 majority of the cooperators are defendants. Not
21 all.

22 Q. Some didn't get charged with a crime at
23 all.

24 A. Yes.

25 Q. Like Mr. Griego that we talked about

1 yesterday.

2 A. That's the one I was thinking of.

3 Q. Is it fair to say that when you were
4 interviewing cooperators or informants in this case,
5 that it was in your mind you needed to test their
6 information?

7 A. I always do.

8 Q. And in fact, generally speaking -- we're
9 not going to talk about individual informants right
10 now -- but generally speaking, you never fully
11 believe informants, do you?

12 A. When I sit down at the table with an
13 informant, particularly one that I haven't ever
14 spoken with or I'm still getting to know, I'm very
15 suspect of everything they tell me.

16 Q. As a matter of fact, I think you've
17 testified before that "I never fully believe
18 informants' statements, I mean, but I write down
19 what they tell me."

20 A. I have made comments like that in the
21 past.

22 Q. Sometimes the people that you're dealing
23 with are under the influence of heroin,
24 methamphetamine, or other drugs?

25 A. As lawyer enforcement officer,

1 unfortunately that's true.

2 Q. In fact, I think, if I recall in one of
3 your interviews with Mr. Boo-Boo Lovato, you
4 expressed some concern that he might be high on
5 marijuana at the time he was talking to you. Do you
6 recall that?

7 A. No.

8 Q. We'll probably get to that later.

9 A. Was I arresting him?

10 Q. I'm not sure the report tells me that.

11 A. Okay.

12 Q. It doesn't always say that in those
13 reports; right?

14 A. If I'm arresting somebody, I hope I'm
15 reporting that.

16 Q. When you would talk to these potential
17 cooperators or informants, you would often tell
18 them, "To the extent that you help me with my
19 investigation, I'll make that known. If you want to
20 call me as a witness to have your attorney ask me
21 questions about how you helped me, I promise you I
22 will answer all those questions honestly and I'll
23 show up for court for you."

24 A. Correct.

25 Q. When you interview somebody that's a

1 potential government witness, one of the things you
2 want to do is document what they told you, what they
3 say they know, and why they say they knew it.

4 A. Yes.

5 Q. And when you do those interviews, you want
6 to get as much information as possible out of them
7 before a corrupting influence can affect their
8 testimony.

9 A. I want to get as much information out of
10 anyone I'm talking to in those circumstances.

11 Q. But it's important to do it before perhaps
12 their story could change from outside sources?

13 A. That's one reason we want to talk to
14 people early on.

15 Q. One of the things that you actually used
16 with some of the witnesses in this case is a
17 questionnaire that you had drafted.

18 A. Yes, sir.

19 Q. I think there were two different versions
20 of them.

21 A. There may have been more than two. As
22 defendants pled, I would oftentimes remove questions
23 pertaining to them.

24 Q. In those questionnaires, would they be
25 open-ended questions, or would they sometimes

1 include information about a matter you're interested
2 in?

3 A. Both.

4 Q. With respect to questionnaires that you
5 provided to witnesses regarding the 2001 murders,
6 okay? I just want to focus on that. Let me ask
7 you -- well, if I could show you the relevant
8 portion, would it refresh your memory what you put
9 in the questionnaire, at least one of them?

10 A. If you're going to ask me a lot of
11 questions about it, yes.

12 MR. CASTELLANO: While he's looking at the
13 document, Your Honor, I'll object to hearsay. If
14 he's trying to elicit testimony about what someone
15 else told him, we need that person in court and not
16 Agent Acee. So I have an objection to hearsay.

17 MR. CASTLE: I'm not asking anything about
18 what the person responded.

19 THE COURT: Well, I'll let you show it to
20 him and then we'll take it a question at a time.

21 MR. CASTLE: This is the only copy I have.
22 Is it okay if I stand next to him?

23 THE COURT: It is.

24 BY MR. CASTLE:

25 Q. Is that one page of a questionnaire?

1 A. Yes, sir.

2 Q. And I don't want you to give any responses
3 to the questionnaire. In essence, this is a
4 questionnaire where you ask questions of a potential
5 witness and they're supposed to give you a response.
6 Is that right?

7 A. Yes.

8 Q. So I don't want you to get into the
9 response that that person gave. I want to talk to
10 you just about the questions. Okay?

11 A. Okay.

12 Q. And can you tell us -- I highlighted 4.
13 Are those questions that were asked about the 2001
14 murders?

15 A. Yes.

16 Q. And are these the questions that you
17 drafted?

18 A. Yes.

19 Q. Can you -- well, let me ask you, when you
20 asked a question and you provide information in that
21 question, is there a concern that then a cooperator
22 might take that information and formulate a story?

23 Let me give you an example. If I go up to
24 my minor son and I say to him, "You know, son, I
25 want to know what happened with these cookies here.

1 They seem to be gone. You're not going to be in
2 trouble if you tell me it was your sister."

3 Under that scenario, it might give my son
4 an idea that it's okay to blame my sister; right?
5 Blame the sister?

6 A. It could, yes.

7 Q. So let me ask you what was in the
8 questionnaire about the 2001 murders that was
9 provided to some of the cooperators in this case?

10 A. Do you want me to read it?

11 Q. Yes, if you could?

12 A. Question number 96. "Francisco Castillo,
13 a/k/a Pancho, was murdered in 2001 at the Southern
14 New Mexico Correctional Facility by Angel DeLeon,
15 Joe Lawrence Gallegos, Edward Troup, Leonard Lujan,
16 and Billy Garcia. Why was Castillo killed?"

17 Q. Okay. Let's stop with that one.

18 THE COURT: Mr. Castle, would this be a
19 good time for us to take our break? I need to let
20 Ms. Bean rest because we started early in here. Is
21 that okay?

22 MR. CASTLE: That would be good. Can I
23 ask -- let me ask one question.

24 THE COURT: You may.

25

1 BY MR. CASTLE:

2 Q. Why didn't you just say, "Do you know
3 anything about the 2001 murders," instead of telling
4 the witness that these men are guilty?

5 A. There are too many murders in the SNM.
6 I've got to be more specific.

7 Q. You couldn't just have said "the 2001
8 murders of Orlando Garza and Frank Castillo at
9 Southern New Mexico Correctional Facility"?

10 A. I'm sure there is a dozen different ways I
11 could word the question.

12 MR. CASTLE: Thank you, Judge.

13 THE COURT: All right. We're going to be
14 taking our first morning break during the trial, at
15 least the evidentiary portion of the trial, so I'm
16 going to remind you of a few things that are
17 especially important.

18 Until the trial is completed, you're not
19 to discuss this case with anyone, whether it's
20 members of your family, people involved in the
21 trial, or anyone else. And that includes your
22 fellow jurors.

23 If anyone approaches you and tries to
24 discuss the trial with you, please let me know about
25 it immediately. Also you must not read or listen to

1 any news reports of the trial. Don't get on the
2 internet and do any research for purposes of this
3 case.

4 And finally, remember that you must not
5 talk about anything with any person who is involved
6 in the trial, even if it doesn't have anything to do
7 with the trial. If you need to speak with me,
8 simply give a note to one of the court security
9 officers or Ms. Bevel.

10 I'll probably repeat these a little bit
11 today and then we'll begin to tail off. But do keep
12 them in mind each time we take a break.

13 All right. We'll be in recess for about
14 15 minutes. All rise.

15 (The jury left the courtroom.)

16 THE COURT: All right. We'll be in recess
17 for about 15 minutes.

18 (The Court stood in recess.)

19 THE COURT: All right. I'm looking around
20 the room. I know the marshals want to feed the
21 defendants something special today, so I need to
22 determine a lunch break. Ms. Armijo was wanting to
23 do something with the taint team. If we can get
24 started right now, if we can get the jurors lined up
25 and brought in, then we can have a lunch break at

1 11:30 and take an early lunch. Or we could take a
2 break and do what we did in the prior trial and run
3 it to about 1:15, take a late lunch, and make the
4 afternoon shorter. But I do need to let the
5 marshals know for certain now. Any preferences from
6 the Government?

7 MR. BECK: Late.

8 MS. ARMIJO: Late.

9 THE COURT: Do you want to do that?

10 MR. CASTLE: My suggestion is we have
11 Ms. Bevel inquire what the jury wants to do. I'm
12 more concerned if some of them get low blood sugar
13 and they can't listen; or if they want to go late, I
14 think we --

15 THE COURT: All right. We'll go ask them
16 real quick and then I'll tell the marshals when they
17 come in.

18 One of the jurors had a question. Do you
19 remember which juror it was, Ms. Bevel?

20 One of the men said -- try to get the
21 name, so we can connect it. But it says, "5K term
22 for reduced sentence. Does this state how much
23 or" -- I can't read it. It's not the size. It's
24 just the handwriting. "Or is it wide open,
25 including dismissal?" And then, "Two, does the

1 defense pay for the testimony of an expert witness?"

2 I'll mark this as Exhibit -- I'll give you
3 the exhibit number at the break. But if y'all want
4 to look at it, I'm not a very good reader of his
5 handwriting. So I'll put it right there on the
6 bench. Y'all may want to work that in. If you want
7 me to do anything with it, I will.

8 What were you thinking, Ms. Armijo, about
9 the taint team?

10 MS. ARMIJO: Oh, yes, yes, yes.

11 THE COURT: Do you want to maybe -- are
12 they ready? They're lining up?

13 I'm thinking about maybe what we'll do is
14 take it up at lunchtime and then you'll tell me how
15 long it's going to take with the taint team.

16 MS. ARMIJO: It's not a question. It's --
17 he had a question of the Court that he provided to
18 all of us. And Mr. Eicker has documents that he
19 wants the Court to review from three defendants, and
20 he wants to know how to get them to the Court.
21 That's the only issue.

22 THE COURT: So everybody just wants me to
23 do this? Okay. It looks like everybody is in
24 agreement. If you just want to have him bring them
25 over and hand them to --

1 MS. ARMIJO: He's in Albuquerque.

2 THE CLERK: Can he email --

3 MS. ARMIJO: I'll ask maybe first if he
4 can email them, and then provide them to Ms. Bevel,
5 if that will work.

6 THE COURT: That will work.

7 MS. ARMIJO: And if it's too voluminous,
8 Fed Exing it.

9 THE COURT: Well, I'm going to be back in
10 the office, so if it's not urgent, then he can take
11 them over to the office today, and I'll be back in
12 the office tomorrow.

13 MS. ARMIJO: That's true. Okay.

14 THE COURT: This is David Skousen, juror
15 number 7, on the front row. So he's three in from
16 your left.

17 And they like the later lunch. So let's
18 see where we are. Why don't we plan on -- here's
19 what we'll do. We'll take an 11:45 break, then
20 we'll start again at noon, and then we'll go 1:30,
21 we'll take a 1:30 break, and we'll do it an hour,
22 and that will give the men a chance to enjoy their
23 lunch, get the marshals. Is that what you need from
24 me? Is that good? Okay.

25 MR. BURKE: Do you mind if I look at the

1 note?

2 THE COURT: No. All rise. Clerk's
3 Exhibit A. I'll mark it.

4 (The jury entered the courtroom.)

5 THE COURT: All right. Everyone be
6 seated.

7 All right. So I understand we've opted
8 for a little later lunch. So we're going to go to
9 about 11:45, we'll take about a 15-minute break, and
10 then we'll go another hour and a half and then let
11 you go for a late lunch. Probably get in and out of
12 restaurants pretty well, and it will make for a
13 shorter afternoon. I've done this with jurors
14 before, and they seem to enjoy it. We'll pick and
15 choose and see how it goes.

16 All right, Mr. Acee, I'll remind you that
17 you're still under oath.

18 And Mr. Castle, if you wish to continue
19 your cross-examination of Mr. Acee, you may do so at
20 this time.

21 BY MR. CASTLE:

22 Q. Agent Acee, can you read the second
23 paragraph that deals with the 2001 murders?

24 A. The next question?

25 Q. Yeah, I'm sorry.

1 A. 97? "Did Angel DeLeon, Joe Lawrence
2 Gallegos, Edward Troup, Leonard Lujan, or Billy
3 Garcia ever talk to you about the murder? If yes,
4 what did they say?"

5 Q. Can you read the next question?

6 A. Number 98. "Rolando Garza, a/k/a Looney,
7 was killed in 2001 at the Southern New Mexico
8 Correctional Facility by Leonard Lujan, Eugene
9 Martinez, Allen Patterson, Christopher Chavez, and
10 Billy Garcia. Why was Garza killed?"

11 Q. Does it have LC there? I'm sorry.

12 A. No, I think that's the answer.

13 Q. Sorry. And then again number 99?

14 A. "Did Leonard Lujan, Eugene Martinez, Allen
15 Patterson, Christopher Chavez, or Billy Garcia ever
16 talk to you about the murder? If yes, what did they
17 say?"

18 Q. Were the cooperators that were provided
19 these questionnaires -- did you tell them to rush
20 through these questionnaires or take their time
21 or --

22 A. No. And in most cases, the cooperators
23 weren't provided with them. The agents doing the
24 interview were provided with them. In some
25 instances -- I can think of one -- a cooperator was

1 rushed for time. With his attorney's permission, we
2 gave him the questionnaire, and then the
3 questionnaire went back to the attorney and then to
4 us.

5 Q. And who was that?

6 A. Frederico Munoz.

7 Q. I wanted to clear up some stuff that we
8 talked about earlier. The 5K1.1 motion.

9 A. Yes, sir.

10 Q. In your experience, what happens is that
11 the U.S. Attorney will file one saying that
12 essentially this individual who is facing sentencing
13 cooperated; is that right?

14 A. More or less, yes.

15 Q. And they can request the judge to reduce
16 the sentence by a percentage, by a number of months,
17 or any number of things; that's up to their
18 discretion on what they request the judge to do?

19 A. You know, to be clear, I'm not part of
20 that process. I'm aware of the 5K process, that it
21 exists, but I don't know it that well.

22 Q. Okay. So this is probably a question we
23 should ask someone else?

24 A. Yes, sir.

25 Q. Okay. And then in respect to the defense

1 paying witnesses, I think I'd asked you some
2 questions about whether or not we're allowed to pay
3 a witness who wants to cooperate with us. We are
4 allowed to pay an hourly fee to experts that are for
5 the defense; is that right?

6 A. I believe so.

7 Q. So that would be the exception to that;
8 there is nothing wrong with that?

9 A. It's a lawful exception, yes.

10 Q. And I think also you indicated that most
11 of the cooperators got around, what was it, \$500
12 or --

13 A. A month, the average is about \$50 a month.

14 Q. For a total of what, total?

15 A. It depends on the person. I mean, some
16 cooperators cooperated early on; others dropped out
17 just before going to trial. So it kind of depends.

18 Q. Are you aware that the defense requested
19 in the last week that we get an updated list of how
20 much these cooperators that are testifying in this
21 case were paid?

22 A. Yes, and that request filtered down to me
23 and I asked Agent Nancy Stemo to compile those
24 numbers.

25 Q. And did you get to take a look at it

1 because it's hot off the presses, essentially?

2 A. I think I saw her draft, yes.

3 Q. So is Mario Montoya someone who is listed
4 to testify in this trial?

5 A. Yes.

6 Q. And he has gotten a total of \$10,428.76?
7 Does that sound right?

8 A. Yes.

9 Q. And part of it is for what they call CHS
10 services (payments). What does that mean?

11 A. So we're able to make -- this is going to
12 come down to an administrative issue. We're able to
13 make a request. We are able to make a request --
14 we, the FBI agents that have these sources are able
15 to request fundings under CHS services, and that has
16 a drop-down menu with a lot of options we can
17 choose -- or CHS expenses. So if a source had to
18 travel to a meeting somewhere to meet with targets
19 of the investigation and they had to buy a plane
20 ticket and stay in a hotel, they could come back and
21 give us receipts and we would reimburse them for
22 that. Those are the two categories.

23 Q. So the payments are not for expenses
24 related to being a witness; they're just a payment.

25 A. Well, I don't know. I mean, I like to

1 just give you a total amount of U.S. dollars
2 attributed to this person.

3 Q. Well, with Mr. Montoya -- we'll just use
4 him as an example. It says here he got \$5,200 for
5 CHS services payments. What was that for?

6 A. There's a few things there. It might help
7 me to look at the breakdown.

8 Q. Oh, yeah. I'll just stand here, too, if
9 you don't mind.

10 Okay. So he has different categories
11 here. He has \$5,200 in payments; right?

12 A. Under CHS services, yes.

13 Q. Okay. And what would that be for?

14 A. That's going to be largely his relocation,
15 money, cash, that allowed him to relocate out of
16 state.

17 Q. Then you have a couple other areas. It
18 indicates you paid \$2,970 for trade school?

19 A. Yes. I sent him to a school to get a
20 specific license so he could be employed in the new
21 state that we relocated him to.

22 Q. So a total of \$10,428.76; right?

23 A. Yes.

24 Q. Then with Gerald Archuleta -- Grandma I
25 think is his nickname.

1 A. More commonly known as Styx, but that is
2 one of his names.

3 Q. Okay. Styx, Grandma, whatever.

4 A. Styx.

5 Q. On this document it calls him Grandma;
6 right?

7 A. I think so, yes.

8 Q. Okay. That's the only reason I used it.
9 And he's been in prison the whole time when his
10 payments were made; right?

11 A. Yes.

12 Q. Did he receive \$2,399.62 in payments?

13 A. Yes.

14 Q. Javier Alonso, \$909.65. Do you want me to
15 come up there so you can just confirm it? Unless
16 you have an amazing -- you're Rain Man here.

17 A. I need you to turn the page.

18 Q. All right. Javier Alonso, \$909.65?

19 A. Yes.

20 Q. Benjamin Clark got payments in total of
21 \$750?

22 A. Yes.

23 Q. And he's also a person that's in custody;
24 not someone on the streets?

25 A. Yes.

1 Q. And then Billy Cordova got \$950; is that
2 right?

3 A. Yes.

4 Q. Ruben Hernandez, another \$950?

5 A. Yes.

6 Q. Leonard Lujan \$1,950?

7 A. Yes.

8 Q. And that's, again, not for moving or
9 anything like that. It's just --

10 A. He's been in custody the whole time.

11 Q. Eugene Martinez, \$970.41?

12 A. Yes.

13 Q. Now, he was a defendant for a while;
14 right? Eugene Martinez? A charged defendant before
15 he cooperated; right?

16 A. Yes.

17 Q. Were any of these payments to Mr. Martinez
18 made before he took a deal and started to cooperate?

19 A. No, with the exception of the reason you
20 have such a funny number there, the 41 cents, is
21 when a potential cooperator would come and meet --
22 we call it, like, a meet-and-greet; they come with
23 their attorney to a meeting, and we would talk to
24 them and they may or may not decide to cooperate.
25 If we bought them lunch, I put that receipt in

1 there, too. So sometimes you'll have these funny
2 numbers.

3 Q. Government accounting; right? You've got
4 to account for everything?

5 A. Yeah, when you're paying out-of-pocket.

6 Q. Robert Baby Rob Martinez has gotten
7 \$3,709.26; is that right?

8 A. Yes.

9 Q. In either money on his books or lunch.

10 A. Correct.

11 Q. Is Roy Martinez going to testify, to your
12 knowledge?

13 A. Yes.

14 Q. Okay. He got \$1,650 in payments?

15 A. Yes.

16 Q. Timothy Martinez, who is going to testify,
17 got \$1,362.86 in payments?

18 A. Yes.

19 Q. Manuel Jacob Armijo got \$500 in payments?
20 Big Jake?

21 A. Yes. He just got that after he testified
22 in the first trial for security cameras.

23 MR. SINDEL: Your Honor, I'm going to
24 object to any other trial but this one here.

25 THE COURT: All right. Unless you're

1 asked about any other trial specifically, give the
2 lawyers an opportunity to object. So don't bring it
3 up on your own. If the attorneys ask, then it will
4 give them a chance to object.

5 MR. SINDEL: I'd ask that the jury be
6 instructed to disregard that last statement.

7 THE COURT: If it's all right with
8 Mr. Castle.

9 MR. CASTLE: That's fine.

10 THE COURT: So I'll instruct the jury to
11 disregard the comments about other trials that were
12 just made.

13 BY MR. CASTLE:

14 Q. Frederico, code name Gladiator, was given
15 \$2,209.26.

16 A. Yes.

17 Q. Did he get to pick that name?

18 A. No. The agent that initially opened him
19 chose that name.

20 Q. I'm just curious, because I think he gave
21 himself the nickname of Sun Tzu, right, at one
22 point?

23 A. I think so.

24 Q. And that is somebody who wrote a book on
25 the art of war?

1 A. Yes.

2 Q. So I was just wondering if Gladiator was
3 derived from his desire to be considered a master of
4 the art of war.

5 A. Some agents, when they open up an
6 informant, will ask -- well, they'll explain, "Hey,
7 you need a code name. Pick one. But it's got to be
8 one that wasn't used before by the office."

9 Q. Sometimes they have a sense of humor, too;
10 right?

11 A. They do, yeah.

12 Q. Okay. Paul Rivera has \$1,650 in payments?

13 A. Yes.

14 Q. Sammy Griego, code name Sandman, was given
15 \$15,199.64 in payments; right?

16 A. Yes.

17 Q. John Montano. Is he a witness?

18 A. I believe he is.

19 Q. It may be for a count I'm not here on, but
20 he got \$1,150; is that right?

21 A. Yes.

22 Q. Fred Quintana. He's in custody; right?

23 A. He is.

24 Q. And he's received \$5,434.23 in payments?

25 A. Yes.

1 Q. And then Mario Rodriguez, \$507 plus
2 change?

3 A. Yes.

4 Q. Lawrence Torres, another \$650; is that
5 right?

6 A. Yes.

7 Q. Robert Boo-Boo Lovato, \$1,750 and some
8 change?

9 A. Yes.

10 Q. And then Leroy Lucero, \$7,872.90; is that
11 right?

12 A. Yes.

13 Q. Can you think of any cooperator who hasn't
14 been given any cash, at least for this trial?

15 A. I can think of one right off the top of my
16 head. There have been a couple. I'd need more time
17 to --

18 Q. That's fine.

19 The FBI rules actually allow for the FBI
20 to give a lump sum payment to a witness -- a
21 cooperator after they're done with their
22 cooperation, including testifying and things like
23 that. The rules allow for a lump sum to be given to
24 someone; right?

25 A. Yes.

1 Q. And is there a limit on the amount that
2 can be given to someone?

3 A. There is a limit that I can approve, but I
4 think in terrorism cases there's been a million
5 dollars given before, I've heard of.

6 Q. When you sit down with a potential
7 cooperator, do you approach those interviews in a
8 methodical and organized manner?

9 A. I try to.

10 Q. That's one of the reasons for that
11 questionnaire; right?

12 A. Yes.

13 Q. It's to be able to -- and correct me if
14 I'm wrong. That questionnaire will have questions
15 about every possible homicide that you're -- or a
16 lot of them, I guess, that you're investigating;
17 right?

18 A. And it ends with any other ones I haven't
19 mentioned.

20 Q. Right. So you open it up and say, "Look,
21 if I haven't mentioned some and you know something,
22 tell me about it"; right?

23 A. Yes.

24 Q. Including ones that -- crimes that those
25 cooperators were involved in?

1 A. Yes. And that's when I started revising
2 the questionnaire to shorten it. Because I think
3 the first version is over 300 questions.

4 Q. Okay.

5 A. And then over time, to make the -- because
6 it was taking us about four hours to go through the
7 questionnaire. So we started shortening it.

8 Q. I guess it can be pretty annoying when
9 someone has 300 questions. Sorry.

10 A. I haven't been counting. Have we gotten
11 there yet?

12 Q. I don't think the numbering system worked
13 that well.

14 When you're talking to a cooperator about
15 a murder, let's say, a generic murder, and they're
16 telling you, for example, "Oh, this guy admitted to
17 me that he committed the crime," okay, are you
18 trying to see if that person, the cooperator, knows
19 some fact that only the perpetrator could have told
20 them? Is that an important thing to look for?

21 A. Yes.

22 Q. Because sometimes the facts of a murder
23 case might be known in the newspapers. That's one
24 thing.

25 A. Sure.

1 Q. Or it might have been part of gossip or
2 the rumor mill; right?

3 A. Yes.

4 Q. And it might be something that perhaps
5 they read on a questionnaire, a fact they read on a
6 questionnaire?

7 A. If they were provided the questionnaire,
8 then yes.

9 Q. So it would be important in your work to
10 evaluate whether that statement some cooperator says
11 another person made -- is whether it includes some
12 kind of unique fact that only the perpetrator could
13 have known. That's at least an important factor?

14 A. That's useful, if that circumstance
15 exists.

16 Q. After you interview a witness, is there --
17 did you write down what they say in a report?

18 A. Yes. I write notes, and then I go back
19 and write a report.

20 Q. And it's a -- FBI, being a federal agency,
21 they have a form for that; right?

22 A. For the report itself?

23 Q. Yes.

24 A. Yes.

25 Q. What's that called?

1 A. It's an FD-302. We usually refer to them
2 as 302s.

3 Q. So when people are talking about 302s in
4 this case, it's a short term for a witness
5 statement?

6 A. An FBI 302 is a report written by an FBI
7 agent. It could be about a witness statement; it
8 could be about almost anything.

9 Q. And those reports are done after the
10 interview is over?

11 A. Yes.

12 Q. And they're based upon some notes you
13 take?

14 A. Yes.

15 Q. And then do you just put in the report
16 what's on the notes, or do you put what's on the
17 notes plus you elaborate?

18 A. I generally start writing my report based
19 on my memory, and I have my notes next to the
20 keyboard as I'm doing it, to make sure I'm covering
21 everything.

22 Q. Do you leave out things that are in your
23 notes in the report?

24 A. Yes. I thought of something right off the
25 top of my head. I oftentimes, specific to this

1 case, I'm asking about their family members or
2 something, and I wouldn't put that kind of thing in
3 a report generally.

4 Q. So that would be -- because it's not
5 relevant to the inquiry, and it might have a safety
6 issue there?

7 A. More of a safety issue.

8 Q. Okay. But if it's something important
9 that one of the witnesses is saying and you have
10 notes on that, you'll put that in the report?

11 A. Yes.

12 Q. That's important to do because the report
13 usually is the only thing that goes out to the U.S.
14 Attorneys and the defense lawyers; right? The final
15 report?

16 A. Yes.

17 Q. But in this case, we asked for the notes,
18 the handwritten notes, and those were recently
19 provided; is that right?

20 A. Ongoing, yes. I think I have some for you
21 all today, too.

22 Q. I guess I know what I'm doing tonight.

23 It's important to do those reports
24 thoroughly because it's an official document about
25 what that witness told you at that particular point

1 in time?

2 A. Yes.

3 Q. And it's important because later, a
4 prosecutor or defense lawyer who is questioning you,
5 or even a judge that might question you, can say to
6 you, "This is what he said on this date or what he
7 didn't say on this date"; right?

8 A. Yes.

9 Q. I want to talk to you about an interview
10 you did with Eugene Martinez.

11 A. Okay.

12 Q. The first interview with him was on May 5,
13 2017; is that right?

14 A. I'd have to look at the report.

15 Q. Okay. Let me show you the report.

16 A. So it looks like he debriefed with us on
17 May 3, May 5, and May 17.

18 Q. Okay. So this would have been a report
19 that kind of accumulated all the statements he made
20 in those three days?

21 A. Yes, sir.

22 Q. I want you to take a look now at your
23 handwritten notes that we were recently produced on
24 that interview. I think those were produced on
25 March 28 of this year. Does that sound about right?

1 A. Yes.

2 Q. Is that big enough for you? It's not big
3 enough for me. Do you want me to make it a little
4 bigger?

5 A. Sure.

6 Q. Neither of us are 26 years old, so we have
7 to make it bigger. Are those your handwritten
8 notes?

9 A. Yes.

10 Q. And do you see these are handwritten notes
11 of your interview with Mr. Eugene Martinez? Do you
12 see that?

13 A. They're definitely my notes.

14 Q. Do you want me to scroll up?

15 A. Sure. If you could put it in the center
16 of the paper, page 1, who I'm talking to. May 5.

17 Q. Now, in here you have Mr. Eugene Martinez
18 saying that?

19 MR. CASTELLANO: Objection, hearsay, Your
20 Honor.

21 MR. CASTLE: I'm not offering it for the
22 truth of the matter asserted, Your Honor. I'm
23 trying to show --

24 THE COURT: What are you trying to offer
25 it for?

1 MR. CASTLE: I'm just showing that the
2 written reports -- the typewritten reports that have
3 been provided to the defense and the Government do
4 not contain critical information that's in their
5 handwritten notes, and that goes to the quality of
6 the investigation.

7 THE COURT: I think you can probably ask
8 that question without us having to get the express
9 information.

10 MR. CASTLE: Well, Judge, I'm sorry. The
11 reason I think it's important to go to the express
12 information is if it's just something that's
13 completely irrelevant, like a family's address or
14 something small, little matter, there might be --
15 you know, everyone can miss that. But if it's
16 something that's very important, then it should be
17 in the report.

18 THE COURT: Well, ask him some questions
19 along those lines. Let's see if we can get it
20 without having actual statements go in front of the
21 jury that I have to tell them to disregard for the
22 truth.

23 MR. CASTLE: Okay. And I'll just ask
24 those statements from the actual witness, then.

25

1 BY MR. CASTLE:

2 Q. Do you see there's a little box here, this
3 area right here?

4 A. Yes.

5 Q. And that's some information generally -- I
6 don't want to get into specifics -- but it's some
7 information that Eugene Martinez is providing
8 concerning a witness by the name of Leonard Lujan;
9 is that right?

10 A. Yes.

11 Q. And it's some pretty impactful
12 information; would that be fair to say? It's
13 something serious.

14 A. It could be.

15 Q. And it's something that, without getting
16 into the exact language, is something about Leonard
17 Lujan that he never shared with you; that Leonard
18 Lujan never shared with you?

19 A. No.

20 Q. I mean, is that right? He never -- this
21 information is something that Eugene Martinez is
22 telling you about Leonard Lujan that Leonard Lujan
23 never shared with you.

24 A. Correct.

25 Q. Okay. And that information was left out

1 of your typewritten report. Do you recall that?

2 A. I don't.

3 Q. Do you want to take a look at that? And
4 you can scroll, take a look. Do you want me to make
5 that bigger again?

6 A. This is fine.

7 MR. BENJAMIN: Your Honor, may I ask for
8 the Bates No. that Mr. Castle is referring to?

9 MR. CASTLE: The report is 42800, and the
10 handwritten notes are at 61425.

11 A. Yes.

12 MR. BENJAMIN: Thank you.

13 A. I can probably do a word search for that
14 word.

15 BY MR. CASTLE:

16 Q. That's fine. As long as we don't lose the
17 computer in the process. Maybe I can do this
18 quicker. If it is in the report, the Government can
19 ask you that and show it to you on redirect, so
20 we'll save some time.

21 A. Sure. I'm sorry.

22 Q. That's all right. But in the meantime,
23 you accept my representation that it's not in the
24 report?

25 A. I will.

1 Q. Somebody just made a reference to some
2 term called Bates stamp, a Bates number. That's
3 just a numbering system that lawyers and doctors use
4 to number pages so that they know what page they're
5 on; is that right?

6 A. Yes.

7 Q. And there was a company that used to make
8 a manual machine that would advance a number and
9 you'd stamp each paper. But now we have computers
10 to do it; right?

11 A. Yes.

12 Q. So that report, we heard, was somewhere in
13 the 40,000 range; is that right?

14 A. I thought it was 80. Was it 40?

15 Q. The printer report was the 40,000 page
16 range.

17 A. Yes.

18 Q. And the handwritten notes were 60,000;
19 right? Would you take my representation?

20 A. Yes.

21 Q. So the pages are stamped based on when
22 they come into the office, so they're sequential
23 over time.

24 A. Yes.

25 Q. So there was quite a bit of time between

1 the production of the actual typewritten statement
2 that did not contain that important information
3 about Mr. Lujan. I think that was produced in 2017.
4 And then the handwritten notes were just a couple of
5 weeks ago; is that right?

6 A. No, I think the notes were turned over
7 more than a couple weeks ago. But the other part of
8 your question is correct, that they seem to be
9 40,000 documents apart or pages apart.

10 Q. I'll stand corrected. It was two and a
11 half weeks ago, March 28, it was turned over to the
12 defense upon their request and an order of the
13 Court.

14 A. I thought it was earlier than that, but I
15 will say I oftentimes turn my things over and I
16 don't always know when they get to you.

17 Q. Here in the courtroom we have a court
18 reporter that writes down every word. You know
19 that; right?

20 A. When we're on the record, yes.

21 Q. And you guys don't have court reporters to
22 do that at the FBI.

23 A. No.

24 Q. But what you do have is tape recorders;
25 right?

1 A. Yes.

2 Q. And if you want to make sure that
3 everything a person says to you is captured, then
4 you can use a tape recorder?

5 A. In some circumstances I could try to do
6 that, yes.

7 Q. In fact, I think you've testified that you
8 always keep a couple of tape recorders on you at all
9 times.

10 A. I try to.

11 Q. Along with a picture of Angel Munoz;
12 right?

13 A. Right.

14 Q. So I want to go through a few of the
15 witnesses that are important to this trial, at least
16 with regard to the 2001 murders. When Frederico
17 Munoz started to cooperate with the FBI in 2009, was
18 his interview recorded with the FBI?

19 A. I'm only hesitating because I know he has
20 some old recorded statements, but I wasn't part of
21 the case then, and so I don't think so.

22 Q. Yeah, let's talk about that. Mr. Munoz
23 made some old recorded statements. But in those
24 recorded statements he never said that he had
25 information that Billy Garcia committed the murders.

1 MR. CASTELLANO: Objection, calls for
2 hearsay and speculation.

3 THE COURT: Well, I think it's an absence
4 of it, so I'll allow the question. Overruled.

5 A. I'd have to --

6 BY MR. CASTLE:

7 Q. You'd have to look?

8 A. I'd have to go back and listen to them
9 again.

10 Q. But the FBI didn't tape-record his
11 statements, to your knowledge?

12 A. I can't think of any recorded statements
13 from Munoz by the FBI, no.

14 Q. Robert Boo-Boo Lovato started cooperating
15 in 2011; is that right?

16 A. Yes.

17 Q. And none of his are -- well, actually, I
18 think one of his is recorded; is that right?

19 A. I think just after his most -- I won't say
20 most recent arrest. After he was initially arrested
21 in my case, I think there was a statement.

22 Q. Sammy Griego. Sammy -- he wasn't
23 recorded?

24 A. No, nor was he arrested.

25 Q. Ben Clark wasn't recorded?

1 A. I believe he was after he was arrested.

2 Q. How about Gerald Archuleta?

3 A. I have done recordings with Mr. Archuleta.

4 Q. Billy Cordova?

5 A. Well, as you know, Mr. Cordova wore an FBI
6 wire, but I did not do a recorded debrief with him.

7 Q. The wire that he wore wasn't related to
8 these charges. It was related to --

9 A. Correct.

10 Q. Big Jake Armijo. His interviews weren't
11 recorded?

12 A. I think his post-arrest one was, but since
13 then, I don't believe there are any.

14 Q. How about Leonard Lujan? Did he -- in any
15 of his interviews with the FBI, were any of his
16 interviews recorded?

17 A. His post-arrest one was.

18 Q. His post-arrest by the FBI?

19 A. Yes.

20 Q. Okay. That was one that was just turned
21 over I think last week, was an audio recording,
22 about an hour and a half?

23 A. I'm not sure. I thought he invoked his
24 right to remain silent when we arrested him on
25 December 3.

1 Q. You know, in the report you wrote about
2 Mr. Lujan's statements, there is nothing about him
3 saying that the statements that Mr. Burkhead made
4 were incorrect. There is none of that in those
5 reports. Do you recall that?

6 A. I don't cite Mr. Burkhead in any of my
7 reports. I don't print his name.

8 Q. So if Mr. Lujan was saying, "Look, what
9 Mr. Burkhead is saying isn't true," why wouldn't you
10 put that in a report?

11 A. I didn't ask the question that way. I
12 just asked him if he had ever decided not to
13 cooperate. I think it was just one question.

14 Q. And his answer was, "No, I never stopped
15 cooperating"?

16 A. Correct. I think what he told me in his
17 answer was, "No, I've always been on board." And he
18 had some medical issues. He was working through his
19 mind trying to figure out why we might think that.

20 Q. Okay. Then I think you said earlier that
21 he told you that he had malingered some medical --
22 psychiatric conditions?

23 A. He didn't use that term. I was interested
24 in, "Hey, are you really crazy?" You know, I'd ask
25 him that question, and he said no, but he got better

1 medical care by pretending to be.

2 Q. So whether it was about the cooperation or
3 whether he was doing some faking on medical and
4 psychiatric matters, you didn't put any of that in
5 any of your reports, either, did you?

6 A. I thought I did, yes.

7 Q. Did you? Okay.

8 A. I think I did.

9 Q. Perhaps we'll have some time to look for
10 that.

11 A. I will, as well.

12 Q. Now, are you aware of a letter that was
13 sent by the defense attorneys on June 23 of 2016,
14 asking that, if at all possible, we'd like to have
15 interviews that are conducted with cooperators
16 recorded?

17 A. You emailed that to me a couple days ago.

18 Q. You didn't get it in June of 2016, I take
19 it?

20 A. No, sir.

21 Q. If I show you that letter, would it --
22 you'd recognize it?

23 A. Yes.

24 Q. And be able to identify it?

25 A. I'll identify what you sent me, yes.

1 Q. I'll show you what's been marked as
2 Exhibit AL.

3 A. I recognize this, sir.

4 Q. And this was a letter that was sent to
5 Ms. Armijo and Mr. Castellano asking -- it was not
6 only directed to them, but also to all agencies
7 reporting to and cooperating with the U.S.
8 Attorney's Office in the investigation and
9 prosecution of the indicted cases. Is that your
10 understanding?

11 A. Yes.

12 Q. And in the letter, we ask that it be
13 forwarded to all agents; is that right?

14 A. Yes.

15 Q. And despite that, it wasn't forwarded to
16 you?

17 A. The first time I saw this was when you
18 sent it to me a couple of days ago.

19 Q. But if you go through this exhibit and you
20 go to what's called attachment A --

21 A. I see that.

22 Q. -- what is attachment A?

23 A. It's a letter from the Office of the
24 Deputy Attorney General, or the DAG, we call them,
25 the Deputy Attorney General, and it's notifying all

1 of the Department of Justice agencies, to include
2 the FBI, that the Department of Justice in 2014 was
3 updating their policy concerning electronic
4 recording of statements.

5 Q. And that went out to the Federal Bureau of
6 Investigation, as well?

7 A. It went to the director and filtered down
8 to everyone in the FBI.

9 Q. So you may not have been aware of the
10 defense letter, but I take it you were aware of this
11 policy when it was issued; is that right?

12 A. I'm aware of this policy, yes.

13 Q. And were you aware in 2014 when it came
14 down or shortly thereafter?

15 A. Yes.

16 Q. And that policy encourages agents and
17 prosecutors to consider electronic recording in
18 investigative or other circumstances where -- unless
19 certain exceptions apply; is that right?

20 A. It does encourage that.

21 Q. Let's talk about that. They talk about:
22 Try to use recordings during custodial interviews.
23 Do you see that? It's on page 2 of the memorandum.

24 A. Yes.

25 Q. What are custodial interviews?

1 A. A custodial interview is the interview
2 that is conducted after a person is arrested, thus
3 in custody.

4 Q. Many of the cooperators -- when you
5 interviewed them, they were in custody; is that
6 right?

7 A. Yes.

8 Q. This policy even allows you to use secret
9 recording devices to record individuals; is that
10 right?

11 A. Yes. It gives us the option to overtly do
12 it, where we might put the recording device on the
13 table; or keep it in our pocket and not divulge that
14 it's there.

15 Q. And this policy includes interviews
16 conducted in connection with all federal crimes,
17 including the ones that are here charged?

18 A. Yes.

19 Q. Now, it does say that you're not to do it
20 if the interviewee says they don't want it to be
21 recorded?

22 A. I'm sorry, did you say does or does not?

23 Q. The policy allows for you not to record if
24 the person you're interviewing says, "I don't want
25 it to be recorded"?

1 A. That is correct. And we have -- yes,
2 that's correct.

3 Q. Did certain of the cooperators in this
4 case, either themselves or their lawyers, say, "We
5 do not want our statements to be recorded"?

6 A. It's usually the attorneys.

7 Q. Okay. For which cooperators that are
8 going to testify in this trial?

9 A. I need to give that some more thought.
10 I'm thinking of a couple of circumstances where an
11 attorney made that comment. I think it was Roy
12 Martinez' attorney. During our initial meeting, she
13 inquired as to if we were recording, and I said,
14 "No," and then she said something along the lines
15 of, "Oh, good," or something like that. I'm not
16 using exact quotes.

17 And then I believe Steven Morales -- I
18 don't know if it was his state or federal attorney
19 that said that.

20 Q. Is he a witness in this trial?

21 A. I believe he will be. Those are the two,
22 off the top of my head.

23 Q. Now, they also indicated, in regards to a
24 recording in this policy, that electronic recording
25 will begin as soon as the subject enters the

1 interview area or room, and will continue until the
2 interview is completed; is that right?

3 A. Yes, so it's a complete recording.

4 Q. So that you don't turn the tape on after
5 you've had initial discussion and then turn it on;
6 right?

7 A. Andy Sipowicz, yeah, hit him with the
8 phone book when the recorder is off, and then --
9 yeah, it needs to be on continuously.

10 Q. And one of the major reasons this policy
11 was put into effect was because the Department of
12 Justice didn't want people to question whether
13 everything that a particular witness was saying was
14 actually recorded.

15 A. I don't know why the deputy attorney
16 general did what he did. I just know that it was a
17 May 2014 policy, and it's one that we follow.

18 Q. Well, in the materials that's in this
19 exhibit, do you recall the following statement?
20 "Creating an electronic record will ensure that we
21 have an objective account of key investigations."

22 MR. CASTELLANO: I'm going to object at
23 this point to counsel reading a document into
24 evidence.

25 MR. CASTLE: This is an admission.

1 THE COURT: Well, are you just going to
2 ask a question after you read one sentence there?

3 MR. CASTLE: Yes, but it's also an
4 admission by a party opponent.

5 THE COURT: I know why it's coming in.
6 But if you're just going to read a sentence and ask
7 a question, that's fine. Overruled.

8 BY MR. CASTLE:

9 Q. Do you recall this quote? "Creating an
10 electronic record will ensure that we have an
11 objective account of key investigations and
12 interactions with people who are held in federal
13 custody," by Attorney General Eric H. Holder.

14 A. That's a quote in a newspaper, so I mean,
15 that's not something he said to us. I know that I
16 read that in a New York Times article. I do agree
17 that that statement is in the newspaper article.

18 Q. And do you agree with those, that -- do
19 you agree with that statement, that creating an
20 electronic record ensures that you have an objective
21 account of key investigations and interactions with
22 people?

23 A. Yes.

24 Q. And also, do you agree with this statement
25 by the attorney general? "With a backstop so that

1 they have clear and indisputable records of
2 important statements and confessions made by
3 individuals who have been detained"? Without
4 looking for the quote, do you agree with that? The
5 recording does that?

6 A. Yes.

7 Q. And then also do you agree with this quote
8 that "The new policy would provide verifiable
9 evidence that our words are matched by our deeds"?

10 A. It could, yes.

11 Q. For many of the -- without going through
12 each one, for many of the interviews with the
13 cooperators, they weren't recorded, were they, for
14 many, the vast majority?

15 A. The debriefings, many of them were not.

16 MR. CASTLE: Your Honor, at this time I'd
17 move for the admission of Defendants' Exhibit AL.

18 THE COURT: Any objection, Mr. Castellano?

19 MR. CASTELLANO: May I see the exhibit
20 first, Your Honor?

21 THE COURT: Certainly.

22 MR. CASTLE: I gave you a copy. That was
23 one I gave you a copy of.

24 MR. CASTELLANO: Your Honor, he's attached
25 additional hearsay to this. I have no objection to

1 the policy itself, but he's attached other documents
2 which are not admissible.

3 THE COURT: Do you want all of them in or
4 just the policy?

5 MR. CASTLE: I want all of them in. Well,
6 there is -- actually, I want the letter that was
7 sent to the United States Government and the policy.
8 The other documents can be left off. The letter is
9 not offered for the truth of the matter. It's that
10 a request was made. And a request is not hearsay;
11 it's a question.

12 THE COURT: Is what he's wanting to get in
13 all right with you?

14 MR. CASTELLANO: No, Your Honor.

15 THE COURT: Well, let me take a look at
16 it.

17 MR. CASTELLANO: There is also a
18 misstatement regarding the time of the recordings.

19 THE COURT: Bring it up here and let's
20 take a look at it.

21 (The following proceedings were held at
22 the bench.)

23 THE COURT: Why don't you maybe put the
24 exhibit exactly as to what you want to come in.

25 MR. CASTLE: The first three pages are a

1 letter the defense lawyers sent to the Government
2 requesting the statements, pointing out what is in
3 the policy attachments, actually the policy. The
4 other attachments I agree with Mr. Castellano are
5 not. I can remove those pages.

6 THE COURT: Yeah. Let me see this.

7 MR. CASTLE: I agree that those are not
8 proper, and the other attachments --

9 MR. CASTELLANO: So the objection would be
10 to the self-serving hearsay, which is the letter by
11 defense counsel for the Government. That is not a
12 statement by a party opponent. The other thing
13 regarding the policy is what defense counsel hasn't
14 pointed out yet, the policy applies to post-arrest
15 statements before defendant's first presentment to
16 the Court. So he hasn't covered that yet with a
17 witness, and I don't want the jury to believe that
18 this applies to all recordings. This is page 2 of
19 the memo. I'm highlighting paragraph E, which
20 refers to timing. And so what defense counsel has
21 done is sent a letter to the prosecution asking for
22 something in excess of the policy. So to attach
23 that self-serving hearsay to the policy simply
24 doesn't cut it.

25 THE COURT: Well, I don't think the letter

1 itself should come in. So you can get the policy
2 in. That will be AL. I'll admit that into
3 evidence. The letter -- I think you can ask him
4 about it, but I don't think -- you can confirm that
5 the request was made and what was made of it, but I
6 don't think the letter itself ought to come in
7 through the defendants.

8 MR. CASTELLANO: No objection to the
9 policy itself.

10 THE COURT: But you can question him about
11 it.

12 MR. CASTLE: I withdraw my request so we
13 don't have to mark this letter.

14 THE COURT: All right. So your policy
15 will be AL.

16 MR. CASTLE: So I'm just going to take a
17 second to re-mark it.

18 THE COURT: Okay.

19 (The following proceedings were held in
20 open court.)

21 THE COURT: All right. So I'm going to
22 mark the policy as AL. And the policy AL, unless
23 there is some objection from the defendants -- not
24 hearing any, Defendants' Exhibit AL will be admitted
25 into evidence.

1 (Defendants' Exhibit AL admitted.)

2 BY MR. CASTLE:

3 Q. Just going back to AL, it's a little
4 thinner now than it was a few minutes ago. Just go
5 to page 1 of this policy that's AL, and the first
6 paragraph says that -- it establishes a presumption
7 that the FBI and other agencies will electronically
8 record statements made by individuals in their
9 custody and then in the circumstances set forth
10 below; right?

11 A. Yes.

12 Q. Then the second paragraph talks about not
13 a mandate, but what they're encouraging you to do,
14 and it says, "The policy also encourages agents and
15 prosecutors to consider electronic recording in
16 investigative or other circumstances." And then it
17 talks about some exceptions; right?

18 A. Yes.

19 Q. And one being that if the interviewee
20 doesn't want to have it recorded.

21 A. That's one of them.

22 Q. So it gives you the discretion not to
23 record in those matters, but you're encouraged to
24 record?

25 A. And we're also encouraged to consult with

1 the prosecutors on that.

2 Q. So did that happen in this case?

3 A. Well, I guess there was a decision made,
4 in that this wasn't passed to me.

5 Q. These debriefings that we've heard about
6 where you bring in somebody who says, "I want to
7 talk to y'all and give you information in return --
8 or the hope of some kind of a disposition."

9 Were any of those debriefings recorded,
10 that you can recall?

11 A. Some of my debriefings were recorded.

12 Q. Okay. Of the witnesses who are going to
13 testify in this case, which ones would have been
14 recorded?

15 A. Gerald Archuleta, Julian Romero, Leroy
16 Lucero. Off the top of my head, those are the more
17 lengthy ones I can think of.

18 Q. I think that you talked about some
19 agreements that you reached, some -- I think you
20 didn't like the word "contract," but you said there
21 was some kind of an agreement that the cooperator
22 would have to go through in order to be a
23 cooperator?

24 A. There are some admonishments. There is an
25 agreement, of course, because we can't force someone

1 to be an FBI informant. There is an agreement, and
2 then the agreement is that they'll do it, they'll be
3 truthful, and that it's voluntary.

4 Q. And is one of the other terms the
5 following? And I quote. Well, the cooperator
6 agrees as follows, and I quote. "Agree to execute
7 all necessary waivers to permit the consensual
8 recordings of all conversations, both in person and
9 telephonic, relevant to criminal activities in the
10 course of this investigation."

11 A. That's not a mandatory one, no.

12 Q. But that's in a lot of the agreements?

13 A. Well, with regard to where we're going to
14 have an informant do a recording in order to
15 document that it's consensual, that language appears
16 in some of our forms documenting that they're
17 agreeing to do that.

18 Q. I'm going to show you a couple of them.

19 A. Thank you. That would be the 479 or the
20 FD-26, maybe?

21 Q. Those are form numbers you're talking
22 about? Okay. While I'm pulling that up, I think
23 you talked about some of these people making their
24 statements in 2011, 2009, and through the years; is
25 that right?

1 A. Some people have talked to the FBI or
2 authorities throughout the years.

3 Q. I'm not sure it's a huge point. Maybe
4 we'll skip over it to save the energy here.

5 A. Counsel, I brought the admonishments. I
6 have them in my pocket, in case it came up. I'm
7 happy to share those.

8 Q. You've got deep pockets. Can you pull
9 that out?

10 A. Sure. I learned to anticipate you a
11 little bit over the last few months.

12 Q. We've been doing this dance for a while,
13 hum?

14 A. So these are -- I cut and paste the four
15 mandatory admonishments, and on the second page I
16 have the optional ones, if they're applicable.

17 Q. Was that one that I was talking about one
18 of the optional ones?

19 A. I think what you're talking about is a
20 consensual form for monitoring, but I'll look. I
21 don't know your entire quote there, but what you're
22 quoting is one of our consensual monitoring forms
23 that the informant signs.

24 Q. Okay. Let's move on. Is it fair to say
25 that it was common knowledge among the inmates

1 residing in the Department of Corrections that you
2 could exchange information in these investigations
3 in order to dodge or lessen the impact of a
4 potential indictment against that inmate?

5 A. No.

6 Q. It wasn't?

7 A. I don't know what the inmates are
8 thinking. But the way you're asking me that
9 question, my answer is no.

10 Q. Well, do you recall testifying that there
11 was a good reason for the inmates to think that it
12 was -- well, let me just give you the question and
13 answer, so I don't botch this.

14 You were asked the following question:
15 "So it's fair to say it was common knowledge within
16 the inmates residing in the Department of
17 Corrections that you could exchange information in
18 terms to dodge an indictment?"

19 And your answer was: "They might have
20 thought that. We were up there quite a bit."

21 And the follow-up question was: "There
22 was good reason for them to think that, wasn't
23 there?"

24 And you said, "Probably."

25 A. I stand by that answer. We don't hide

1 from the inmates. We let them know we're going to
2 come for them if they're S.

3 Q. When you guys -- when you did the mass
4 arrests on December 3, 2015, that wasn't the first
5 time, at least in the community of the SNM people,
6 that they knew that the FBI was doing an
7 investigation, was it?

8 A. On a large scale, yes.

9 Q. I mean, you went around and talked to
10 people, introduced yourselves as the FBI, "We're
11 investigating these kind of matters"; right?

12 A. Not prior to that, no. With just certain
13 exceptions.

14 Q. Well, one exception being Mr. Garcia, you
15 did it in August of 2015. You went up to him and
16 told him, "Look, I'm the FBI, or we are; we want to
17 talk to you about this."

18 A. Yeah.

19 Q. "And we're investigating the 2001
20 murders," things of that nature; right?

21 A. Yeah. I'll tell you point blank, like,
22 the only people I did that with were ones I thought
23 I could flip. That's why I did it.

24 Q. So there were people -- so it wouldn't
25 surprise you that it got around that the FBI was

1 looking into a bunch of murders that they thought
2 were related to the SNM?

3 A. It would surprise me if it happened prior
4 to the Phase 1, because I didn't talk to a lot of
5 people. It wouldn't surprise me after Phase 1. I
6 mean, it was fairly big news in Albuquerque. It
7 certainly would have been big news in the prisons,
8 because we yarded those guys out of there, put them
9 on buses to our processing center.

10 Q. I think you gave one example earlier that
11 when you went in to see Billy Cordova, even before
12 you introduced yourself, he was smiling from ear to
13 ear.

14 A. It was a nervous smile, but it was a big
15 one. He walked in smiling. And I believe when he
16 walked in the room, I can still clearly see it. He
17 knew who we were.

18 Q. And he was smiling about that.

19 A. Well, I don't think he was happy to see
20 us.

21 Q. Could have been he was smiling because
22 this was his lucky day; right?

23 A. Perhaps.

24 Q. He was facing a murder charge? Is that
25 what he was facing, or was it something else?

1 A. He'd been charged -- I think he went to
2 trial and was found guilty of a lesser included,
3 manslaughter or something like that.

4
5 Q. Now, I think we talked about this a little
6 bit, or maybe the Government did in one of the
7 opening statements. I don't remember. But it was
8 these tablets with all the paperwork on it but in
9 digital form that were given to people that were
10 charged with crimes.

11 A. The defendants in this case and the
12 related ones were given tablets, yes.

13 Q. And on those tablets, so that the U.S.
14 Attorney's Office didn't have to break it down by
15 individual crimes, those tablets basically had all
16 the materials on everybody's -- all the allegations
17 put on them.

18 A. Well, to be clear, in I believe three
19 cases -- we have a lot of cases that perhaps could
20 not be the one-offs, I'll call them, but the
21 majority are on the tablets.

22 Q. So if I was a defendant not charged in the
23 2001 murders, and I was just a defendant on some
24 other event, I got one of these tablets, it would
25 have all the information about the 2001 murders in

1 there; right?

2 A. It would.

3 Q. Now, before they came forward, did Big
4 Jake Armijo have one of those tablets, or his lawyer
5 have access to the paperwork?

6 A. As a defendant in the case, he should have
7 had one. I don't know that -- I don't know if he
8 did.

9 Q. Okay. Well, his lawyer certainly would
10 have had, by law.

11 A. I agree, yes. He should have had access
12 to the discovery. And there was an order that said
13 it had to be electronic, so I assume he had one.

14 Q. And that would apply to the witness Eugene
15 Martinez that came forward?

16 A. Yes.

17 Q. How about Mr. Archuleta?

18 A. Yes.

19 Q. Baby Rob Martinez?

20 A. Yes. And there's two Archuletas. Gerald
21 Archuleta would have had one.

22 Q. Okay. Thank you for correcting that.
23 That's with the Garcias, as well, so we get all that
24 straight, too. So a vast majority of these
25 witnesses, they've had access to these materials;

1 right?

2 A. Yes.

3 Q. And the ones that are out of custody could
4 print it off if they wanted to; right?

5 A. I don't think so.

6 Q. Well, they're not allowed to, but they
7 could. They could have access to printers to print
8 off discovery; right?

9 A. Yes, but my understanding is that the
10 tablet -- that feature was disabled.

11 Q. So for the inmates that are in custody,
12 like all these defendants, their tablets were made
13 in a way where they couldn't hook it up to a printer
14 even if one existed in the Department of Corrections
15 and print off discovery to hand out to people?

16 A. To be clear, I've never handled one of the
17 tablets, so it's just my understanding that certain
18 features are disabled, such as being able to print.

19 Q. Did some of the cooperators do something
20 to their tablets so that they could be used for
21 something else?

22 A. Yes.

23 Q. What did they do?

24 A. Figured out a way to reset it, like a
25 master reset, that took all of the security features

1 off, that the manufacturer of the tablets weren't
2 even aware of.

3 Q. What could they do, then, with their
4 tablets?

5 A. Well, it was reset, so it didn't contain
6 the discovery material, so it's like any other
7 tablet that you turn on. It's warming up and it's
8 capable of just being a tablet without all those
9 security features and disablements.

10 Q. And did they use it for -- what did they
11 use them for?

12 A. They accessed the internet while they were
13 at the jail in Bernalillo, the Sandoval County jail.
14 There's a Walmart and a McDonald's nearby that had a
15 Wi-Fi signal. My understanding is in certain parts
16 of the jail they were able to access that signal and
17 thereby access the internet and anything the
18 internet had to offer.

19 Q. They could email people?

20 A. Yes. In fact, two of them emailed me.

21 Q. And did they access pornographic sites?

22 A. Yes.

23 Q. Who did that kind of stuff with their
24 tablets? Who had the tampered-with tablets?

25 A. Benjamin Clark, Jerry Armenta, Gerald

1 Archuleta, Federico Munoz. I'm forgetting some.

2 Q. Okay. If we remember, we'll bring it to
3 your attention.

4 So when that was discovered, I take it the
5 FBI or someone took all the tablets into custody;
6 right?

7 A. Yes, I discovered that by way of an
8 attorney alerted me to it. I didn't believe it. I
9 went up there to verify it. I didn't get
10 verification right away. That's why I mentioned the
11 emails. I told him, "If you can, here's my email
12 address. Send me an email, kind of proof of this."

13 They did. Then I alerted the facility,
14 the jail facility, the U.S. Marshal Service, and the
15 U.S. Attorney's Office. But to be clear, I didn't
16 seize anyone's tablets, because I don't believe I
17 have the authority to do that.

18 Q. So someone took the tablets; right?

19 A. The U.S. Marshal Service caused them to be
20 seized and they ultimately took custody of them.

21 Q. And it wasn't just those people that
22 violated the policy; they took all the -- everybody
23 who had one of these tablets, including these men
24 here on trial?

25 A. Yes.

1 Q. And just really quickly, these men on
2 trial didn't tamper with their tablets at all, did
3 they?

4 A. Not that I'm aware of, no.

5 Q. Okay. So the cooperators did; is that
6 right?

7 A. Some of them did, yes.

8 Q. And that was in violation of an order from
9 the Court?

10 A. I believe so. I don't know if the order
11 said, "You can't do that," and some of the
12 cooperators brought that up. But in my eyes, you
13 can't do that. And those that did got closed as FBI
14 informants.

15 Q. And nobody has been prosecuted for doing
16 that tampering with these federally issued
17 electronic devices; right?

18 A. Mr. Castle, I looked. I couldn't find a
19 statute to prosecute anybody. I also looked to do
20 search warrants, and I couldn't find a statute that
21 supported me going to a magistrate with a search
22 warrant.

23 Q. But the U.S. Attorney's Office could have
24 moved for contempt citations; right?

25 A. I don't know. That wasn't my reading of

1 it, but I'm not an expert on the law.

2 Q. You know, I don't want to go through all
3 the nasty details, but some of these men looked at
4 some pretty disturbing things on the internet.

5 A. Well, if you're considering pornography
6 disturbing, then, yes.

7 Q. I'm not talking generally about
8 pornography. I mean, for example, Frederico Munoz
9 did searches for having intercourse with mothers?

10 A. With what?

11 Q. With mothers.

12 A. I don't -- so I want to be clear; it might
13 help with the questions I'm asked. I haven't, to
14 this date, seen what they've looked at other than
15 what was presented in this courtroom.

16 Q. Well, you were aware -- I think you've
17 been questioned and answered on this -- that one of
18 the cooperators was looking at teenage underage
19 pornography.

20 A. Yes. An attorney asked me if I was aware
21 and made an insinuation that that would be child
22 pornography. And I made the distinction that it's
23 not. Teenage -- doing a Google search -- first of
24 all, Google has filters there not to allow that. I
25 was trying to correct what I think was maybe an

1 accusation by an attorney, not yourself, that was
2 saying that they'd accessed child pornography, and I
3 didn't agree with that.

4 Q. Did you look at what they accessed?

5 A. No.

6 Q. So you haven't -- even though there was
7 concern that underage people were being --
8 photographs of underage individuals were being
9 accessed by at least one of the cooperators, you
10 haven't investigated that?

11 A. No, the determination was that a defense
12 expert would look at them.

13 Q. Okay.

14 A. And so I shipped them to that person or
15 caused them to look at them, and then I sat through
16 proceedings that discussed that, and that was not
17 founded.

18 Q. Well, the defense asked to review -- not
19 any of these lawyers, but some other lawyers asked
20 to review those tablets to see what was on them;
21 right?

22 A. Yes, sir.

23 Q. Didn't prevent you from doing a search
24 warrant or -- to review these tablets; is that
25 right?

1 A. I disagree. The FBI's regional computer
2 forensic laboratory won't accept me taking any
3 device in there without legal process. So I
4 communicated to the attorneys, the prosecutors, that
5 I needed a search warrant. We couldn't find a
6 statute. Or I needed a court order.

7 Q. There is a statute against child
8 pornography.

9 A. I agree with you completely. But what's
10 my probable cause to believe that that's there?

11 Q. The defense gave a report. You can access
12 and you can look at the images, sir; right?

13 A. They have been accessed and every image
14 has been looked at. But there's no indication that
15 that's child pornography. What was explained to me
16 is that they did a search for "teenage camel toe dot
17 com," or something like that.

18 Q. Oh, okay. And then did you see what the
19 results were? I don't want to get into the lurid
20 details. I think that's enough. But did you look
21 at the results that came up on their searches?

22 A. Not all of them, but I listened to the
23 expert that did that examination, testified in this
24 court about that, and he himself agreed that these
25 weren't child pornography.

1 Q. Do you know how many of these
2 cooperators -- when one of these guys would have the
3 tablet open with this filth on it, would they share
4 it and show it to the other ones?

5 A. I heard -- and to be clear, that pertained
6 to one defendant, one cooperator. But I did hear
7 that same cooperator say that he would let other
8 people use his tablet.

9 Q. Let's talk about the cooperator pod. They
10 were allowed to move about, right, and congregate
11 and meet with each other, talk to each other, things
12 like that?

13 A. I think at times they were.

14 Q. Obviously, they were allowed to exchange
15 their tablets, right, because you said one other --
16 at least one other person got somebody else's
17 tablet; right?

18 A. That particular person testified that he
19 gave his tablet to nondefendants, noncooperators,
20 just other inmates.

21 Q. Of course, these are cooperators; right?
22 All these people that we're talking about that were
23 tampering with the tablets?

24 A. The persons that I've mentioned and
25 discussed thus far are cooperators.

1 Q. And you've indicated that you didn't have
2 enough evidence to ask for a search warrant to
3 search those; is that right?

4 A. Yes. I looked. I consulted with the U.S.
5 Attorney's Office, and I -- in consultation, we
6 didn't, at that time, when we needed to search those
7 devices, have probable cause to do so.

8 Q. But these are cooperators. You could have
9 said, "Cooperate with us. Let us search your tablet
10 and see if there is something that we should know
11 about on that tablet"; right?

12 A. You're bringing it up, after the fact,
13 some possibilities that could have happened. But
14 there's a couple problems with that. One, I wasn't
15 aware there were any problems with the tablets. The
16 RCFL -- I'm incapable of doing the download. I'm
17 not that savvy. It has to go through the RCFL.
18 They require legal process, and each of the people
19 we're talking about has an attorney.

20 Q. Are you saying -- okay, I don't know what
21 RCFL -- it sounds like some kind of division of the
22 FBI that does electronic data searches; right?

23 A. It's the Regional Computer Forensics
24 Laboratory in Albuquerque.

25 Q. If a person consents to giving them a

1 device to look at, you're saying they won't look at
2 it?

3 A. They would.

4 Q. Were there any efforts made by the FBI or,
5 that you're aware of, on the Government team to ask
6 these cooperators to cooperate by consenting to have
7 the Government search these tablets?

8 A. Yes.

9 Q. And what happened?

10 A. The tablets were initially searched by the
11 New Mexico Corrections Department IT folks, the ones
12 that are responsible for tablets. They made a
13 determination that the tablet was either tampered
14 with or not. If it was not, my understanding is it
15 was given back to the attorney and ultimately the
16 defendant.

17 Q. Right.

18 A. Those that were tampered with were then
19 retained by the Marshal Service until we figured out
20 what legal process or remedy there was.

21 Q. And then that wasn't at the consent of the
22 cooperators; that was by the order of the Court?

23 A. The Court did order that certain tablets,
24 but not all, be examined, and I shipped those to the
25 defense examiner.

1 Q. So let's just finish this whole thing.
2 The bottom line is: The FBI or the Government
3 didn't go to the cooperators, ask them and their
4 lawyers to allow you to search their tablets to see
5 if there's anything that broke any federal laws on
6 them?

7 A. They did. Yes, that was asked. These
8 attorneys asked cooperator attorneys for permission
9 to look through the tablets, because that's how they
10 got the pass codes.

11 Q. And whatever their answers were, you guys
12 didn't do the search.

13 A. It was determined that the defense
14 investigator would do the search. I'm happy to do
15 the search once there is legal process.

16 Q. You don't need a legal process to do a
17 search if there is a consent to search? Yes or no,
18 so we can go on.

19 A. You know why I'm hesitating? I'm not
20 trying to be difficult, but there is attorney/client
21 privileges here that I'm going to always go with the
22 legal process.

23 Q. In your investigation of the SNM over the
24 years, did you determine that there were different,
25 I guess, subgroups at times that were formed,

1 different alliances?

2 A. There were different alliances.

3 Q. And I want to talk about one such alliance
4 or rivalry that happened. In around late summer
5 2000, did a man by the name of Gerald Styx
6 Archuleta -- did he go into jail for some crime?

7 A. I believe so.

8 Q. And about the exact same time, did another
9 leader -- well, he was a leader of the SNM, a fairly
10 high leader; right?

11 A. Yes.

12 Q. The top leader at that time was a guy by
13 the name of Angel Munoz?

14 A. Yes.

15 Q. And thanks to you, I have a photo of him.
16 I'll show you what I've marked as Exhibit
17 AM. It still is AM, a little bit.

18 MR. CASTELLANO: I have no objection to
19 the admission of this exhibit if defense counsel is
20 moving its admission.

21 THE COURT: Do you want to move its
22 admission? Any objection from any other defendant?
23 Not hearing any, Defendants' Exhibit AM will be
24 admitted into evidence.

25 (Defendants' Exhibit AM admitted.)

1 BY MR. CASTLE:

2 Q. I take it the picture you had in your
3 wallet wasn't that size. You blew it up a little
4 bit.

5 A. Wait a minute. I never said my wallet.

6 Q. Oh, I'm sorry. Your pocket.

7 A. These are the kinds of things that create
8 records that get used against me later.

9 Q. Well, we won't look at your tablet either.
10 So let's see if we could get AM up. Maybe
11 we can do it on this. Is that him?

12 A. Yes, sir.

13 Q. So he was kind of like the top guy, the
14 godfather of sorts; right?

15 A. Yes.

16 Q. And then Gerald Archuleta was right below
17 him?

18 A. Yes.

19 Q. And so around this time in around 2000,
20 Angel Munoz left the prison system?

21 A. Correct.

22 Q. And so Gerald Archuleta wanted to be
23 number 1?

24 A. Two people did, and Archuleta was
25 selected.

1 Q. And who was the other? Was it Julian
2 Romero?

3 A. No, Chaparro. Manuel Maldonado I believe
4 is his name.

5 Q. So now the new honcho, head honcho -- I
6 don't know if that's term they use. I'm sure that
7 isn't. But the top dog is Gerald Archuleta; right?

8 A. Yes.

9 Q. And he goes into jail and at that time
10 Julian Romero gets out of prison.

11 A. Correct.

12 Q. And Julian Romero goes and lives at the
13 house that Gerald Archuleta was living in before he
14 went to jail.

15 A. Eventually. He initially went to get
16 drugs from that woman to help smuggle into the
17 prison, and then a relationship developed.

18 Q. So is it Lilly?

19 A. Yes.

20 Q. And so he lived with Lilly; is that right?

21 A. Eventually.

22 Q. And when Mr. Archuleta found out about
23 this, that caused a major problem, didn't it?

24 A. It did.

25 Q. And in fact, it grew to where

1 Mr. Archuleta wanted Julian Romero murdered.

2 A. Definitely.

3 Q. Now, Julian Romero was one of the
4 original -- I don't know if they call it original
5 gangsters, but whatever, one of the original members
6 of the SNM; is that right?

7 A. I call him -- and he's agreed with me --
8 that he's one of the original eight identified
9 members that was present during the riot in 1980.

10 Q. When this split happened, it caused a
11 split, people took allegiances to one or the other,
12 to either Julian Romero or Styx Archuleta.

13 A. They identified with them. I always refer
14 to it as kind of a civil war within. But yes, they
15 definitely had different sides they identified with.

16 Q. And Mr. Billy Garcia sided with Julian
17 Romero; is that right?

18 A. Yes, sir.

19 Q. And then people that sided with Gerald
20 Styx Archuleta included people like Freddie Munoz?

21 A. Yes.

22 Q. And Robert Martinez?

23 A. I thought he was a little more neutral,
24 but I know that he favored Styx back in the day,
25 yes.

1 Q. And several other of the people that we're
2 going to see; right?

3 A. I think it's diversified.

4 Q. Okay. Lining up teams?

5 A. It's diversified, yes.

6 Q. So the SNM -- in your investigation, did
7 you notice that there would be a lot of -- or at
8 times, at least -- backstabbing among various
9 members?

10 A. Absolutely.

11 Q. Fighting each other for superiority or
12 higher ranking?

13 A. Yes.

14 Q. Sometimes that took the form of actually
15 trying to kill your rival, like Julian Romero,
16 possibly?

17 A. Yeah, I don't think that's more of a
18 rivalry. I mean, I tend to agree with you. It's a
19 backstabbing organization, but that was over a
20 woman.

21 Q. Okay. There is a term that's been used
22 called dry-snitching?

23 A. Yes.

24 Q. Is that a term that gangs use?

25 A. Yes.

1 Q. And how is that different than regular
2 snitching?

3 A. May I give you an example?

4 Q. Okay.

5 A. Let's say I've been tasked as a gang
6 member with doing something I don't want do. Maybe
7 it's hit somebody. I can write a kite or a small
8 letter to cause it to be found by the corrections
9 officers and it can say, "Bryan Acee has a shank in
10 his cell." And I do have a shank. So when they
11 come search me, they find my shank and I get locked
12 up. So now I have a reason not to do the hit.
13 That's an example of dry-snitching.

14 Q. Sometimes dry-snitching is used to get one
15 of your -- somebody that you don't want around to
16 get thrown into the hole or moved to another prison.

17 A. Definitely.

18 Q. So using a different example, let's say I
19 have a rival or somebody I want to get rid of,
20 they're my competition. I could say my competition
21 did something bad by dropping a note to the
22 authorities, and if they acted on it, they might
23 move my competition away for another prison or put
24 him in a 23-hour lockdown setting or something like
25 that?

1 A. Yes.

2 Q. Then I would rise to the top because my
3 competition is gone, at least in theory.

4 A. Probably not for long, but yes.

5 Q. Okay. That would often take the form of
6 people dropping notes saying, This other person, my
7 competition, committed a crime or committed -- they
8 have a shank in their cell, or they might have, you
9 know -- whatever the information is, it's got to be
10 significant enough for the Department of Corrections
11 to then act on it.

12 A. Yes.

13 Q. It can't be, He was out of line at chow,
14 or something like that.

15 A. I don't think the COs will care much.

16 MR. CASTLE: Your Honor, I know the Court
17 said it wanted to stop at 11:30. This is a logical
18 place.

19 THE COURT: Okay. Let's do that. Let's
20 take about a 15-minute break and then we'll come in
21 and work about an hour and a half, and take our
22 lunch break about 1:15. All rise.

23 (The jury left the courtroom.)

24 THE COURT: Before I forget it, this
25 material I'm getting from the taint team, probably

1 each one of you maybe ought to shoot me an email and
2 tell me what I'm looking for or what I'm supposed to
3 be doing.

4 All right. We'll be in recess for about
5 15 minutes.

6 (The Court stood in recess.)

7 THE COURT: All right. Do we have a
8 lawyer for every defendant? All rise.

9 (The jury entered the courtroom.)

10 THE COURT: All right. Everyone be
11 seated.

12 With us being in this room all day,
13 sometimes there's big news out in the world, and
14 I'll try to keep you posted. But my wife just told
15 me that the Cowboys released Dez Bryant, so...

16 MR. CASTLE: They've got some salaries --

17 THE COURT: That's probably lost on half
18 the people, and to the other half, it's stunning
19 news.

20 All right, Mr. Acee, I'll remind you
21 you're still under oath.

22 Mr. Castle, if you wish to continue your
23 cross-examination of Mr. Acee, you may do so at this
24 time.

25

1 BY MR. CASTLE:

2 Q. Agent Acee, we had talked somewhat about
3 various things that some of these cooperators have
4 asked for or received; is that right?

5 A. Yes, sir.

6 Q. I want to go and talk about something that
7 we haven't talked about. Some of them have asked to
8 go into federal custody.

9 A. Yes.

10 Q. In fact, one in particular, Frederico
11 Munoz, Playboy -- he wants to go -- he's mentioned
12 on a number of occasions that he wants to go to
13 federal custody instead of state custody; is that
14 right?

15 A. Yes.

16 Q. And in fact, he wanted to be indicted so
17 that that would be the case.

18 A. Yes.

19 Q. And I want to talk to you about some of
20 the prison situations over in the federal system;
21 right? They have various levels of custody, meaning
22 various levels of, I guess, how hard the prison is;
23 is that right?

24 A. Yes.

25 Q. And that the hardest one is ADX. Do you

1 know what the ADX stands for? I don't either.

2 A. Florence.

3 Q. It's just the biggest, baddest prison in
4 the world; right?

5 A. I don't know if it's the baddest in the
6 world, but it's our most secure facility in the
7 federal system.

8 Q. I understand that. I didn't mean it that
9 way. But it's considered the most secure prison in
10 the world.

11 A. Definitely in the United States, yes.

12 Q. And they have areas where people are
13 locked down in their cell 23 hours a day; is that
14 right?

15 A. Yes.

16 Q. And then they're let out for one hour a
17 day to a cage to exercise?

18 A. Correct.

19 Q. And in the 23 hours that they spend in
20 that cell, it has a window into the common area, but
21 they can't see another inmate or another human
22 being.

23 A. There's four facilities in ADX, but the
24 maximum security -- excuse me. There's four
25 facilities at Florence. The maximum security, the;

1 ADX, is designed to, my understanding, limit human
2 contact.

3 Q. In fact, if you have to see a doctor, you
4 have to do it through a little TV where the doctor
5 is on the TV, and you talk to the doctor and the
6 doctor talks to you.

7 A. That's my understanding, as well.

8 Q. Then the next level down is what's called
9 the United States penitentiary?

10 A. The USPs, yes.

11 Q. And those are pretty dangerous places.
12 Would that be fair to say?

13 A. I agree.

14 Q. And then they have federal correctional --
15 FCIs?

16 A. Yes.

17 Q. And those are a little bit less serious
18 and less violent?

19 A. Yes.

20 Q. And then they have prison camps.

21 A. Yes.

22 Q. And those are somewhat like residential,
23 but not fully residential. There might sometimes be
24 a pod of four rooms with their own kitchen and
25 things like that, at times?

1 A. Yes. They call those, like, camps, like
2 where the white-collar guys go, yes.

3 Q. Well, it's just more than white collar
4 people that go there. It's people with drug
5 offenses and things like that?

6 A. Yes. I think that brings up another
7 category, but yes, I agree.

8 Q. Now, there is also in that system some
9 facilities that have areas set aside for people that
10 have become witnesses in other cases; is that right?

11 A. Protective custody yards?

12 Q. Yes, or WITSEC yards, or things like that?

13 A. Yes. I think there's a distinction there,
14 but yes.

15 Q. Go ahead and tell us what the distinction
16 is.

17 A. I think the protective custody yards can
18 house inmates that aren't witnesses but have --
19 there's a need for -- to be separated from the
20 general population. In those same yards with those
21 same offenders are people that have been witnesses.
22 And in WITSEC, to me, witness security or what TV
23 refers to as witness protection -- it's actually
24 called witness security or WITSEC -- is a category
25 where it's comprised of just witnesses who have

1 qualified for that program.

2 Q. And without going into all the details of
3 that, because I know some of that stuff is probably
4 not for public consumption, but those WITSEC parts
5 of prisons -- would it be fair to say that those
6 have a fairly low level of violence?

7 A. Yes.

8 Q. And that's because if you do something
9 violent in there, you get kicked out of those, out
10 of that witness security area, and you might go into
11 general population, where you could lose your life?

12 A. Yes, and not just for violence. I mean,
13 if you break the rules, then you would be sent to a
14 protective custody yard before you went to general
15 population. But the theory is that you need to
16 follow the rules or you lose out.

17 Q. And in fact, one notable situation,
18 someone escaped from one of the WITSEC yards and
19 then they were brought back into general population
20 and they died. Are you familiar with that one?

21 A. No, sir.

22 Q. So I think -- have you had discussions
23 with some of the cooperators about these special
24 programs being available once they begin their
25 sentences?

1 A. Yes.

2 Q. And have some of them shown a desire to do
3 that?

4 A. Yes.

5 Q. Now, have any of the cooperators that
6 we're going to hear from in this trial -- have any
7 of them already been sentenced on the cases they
8 took deals on?

9 A. No.

10 Q. So all of their sentences are going to be
11 after they're done with their testimony and things
12 of that nature?

13 A. Yes.

14 Q. Do you know why their sentencing was put
15 off until after they testified?

16 A. Yes.

17 Q. Why?

18 A. So that when they go to sentencing, their
19 attorneys can, I presume, make it known to the Court
20 that they cooperated, and they assisted the
21 Government in this process and took responsibility
22 for their crimes.

23 Q. And it's also to make sure that they do
24 actually fulfill their cooperation duties; right?

25 A. I don't know how to answer that because I

1 think a person could be sentenced and convicted and
2 still come in and testify.

3 Q. All these people that we're talking about,
4 they've cooperated already; they've already sat down
5 with you and given full interviews, et cetera;
6 right?

7 A. Yes, sir.

8 Q. So the only thing that's left is coming
9 into court.

10 A. Yes.

11 Q. And so it was designed that their
12 sentencing wouldn't happen until after they do that
13 last act of cooperation?

14 A. I'm not an attorney, again, but in my
15 experience, that's usually how it works.

16 Q. Now, a few of the cooperators, I believe,
17 have mentioned to you that they'd like to get things
18 like new identities, money, cars, and things of that
19 nature; is that right?

20 A. I think they mentioned that in some phone
21 calls, but that's -- I testified that we didn't have
22 those conversations, save one. Some have asked me
23 questions about the WITSEC program, and would their
24 families have new identities, and I've talked to
25 them about that.

1 Q. And this is actually something that -- at
2 least one instance where the inmate was hoping that
3 he'd get a new identity, so he wouldn't have a
4 criminal record and he could own a gun again.

5 A. I think I know what you're talking about.
6 It wasn't exactly like that. There was a suggestion
7 about him going hunting, and I said it would have to
8 be with a bow and arrow.

9 Q. Who was the hunter we were talking in
10 question?

11 A. It was Daniel Sanchez' brother, Ron
12 Sanchez, in a conversation I was having with him and
13 Mario Rodriguez.

14 Q. So it was Mario Rodriguez wanting to have
15 a gun?

16 A. No, he was suggesting to Ron -- sorry to
17 be confusing here. But I'm up at the penitentiary,
18 I'm talking to a defendant's brother and a
19 cooperator, and they are having a conversation about
20 this defendant, Daniel Sanchez, being able to be a
21 hunter again; maybe if he cooperates, he'll get out,
22 he could get a new name and a new identity and maybe
23 he could go hunting again. And I made the comment,
24 "With a bow and arrow. He's not ever going to have
25 a gun again legally."

1 Q. You know, we were talking a few minutes
2 ago about the prison camps, federal prison camps.

3 A. Yes, sir.

4 Q. Now, are you aware that there's -- I won't
5 say the location, but there is a particular prison
6 camp that is for cooperators?

7 A. No.

8 Q. Are you not aware of that?

9 A. It's a program run by the Marshal Service,
10 and I have picked up people from the facilities, but
11 I don't know that -- I've not been to a camp.

12 Q. Without mentioning the facility, I'm not
13 sure I can ask you more questions about it. But are
14 those prison camps -- those are the ones that some
15 of the people on TV call Club Fed?

16 A. Probably.

17 Q. In New Mexico, do they have a Club Fed
18 type of prison in their state penitentiaries?

19 A. No. There are facilities that might be
20 construed as that in western Texas.

21 Q. Is that the one that looks like -- it's
22 white, that you see when you're going to El Paso?
23 Never mind. It doesn't matter.

24 A. I'm not sure. I haven't been down there
25 in a while. And I don't mean to suggest that it's a

1 witness security facility. It's just a lower-level
2 security.

3 Q. Now, people that are cooperators that do
4 their time, are they given, in some instances,
5 special treatment, extra favors, things of that
6 nature?

7 A. Well, I'm not going to say no.

8 Q. Well, in this case, for example, while
9 they're waiting to testify here, they've been given
10 money. That would be a special consideration.

11 A. That's why I didn't say no. Yes.

12 Q. I think they've gotten additional
13 visitations with family members, cooperators have?

14 A. Yes.

15 Q. And even in one instance they got thrown a
16 pizza party by -- well, they got a pizza party;
17 right?

18 A. Yes.

19 Q. And you attended that?

20 A. I did.

21 Q. And which cooperating witnesses got to
22 attend that pizza party?

23 A. Benjamin Clark, Gerald Archuleta, Jerry
24 Armenta, Javier Rubio. I think Billy Cordova was
25 there.

1 Q. Robert Martinez?

2 A. Robert Martinez, Roy Martinez. I may be
3 missing some.

4 Q. How many of those people were convicted of
5 murder or pled to racketeering counts including the
6 charges of murder?

7 A. I think most of them had murders in the
8 state system, to answer the first part of your
9 question. And then racketeering murders that we
10 charged: Ben Clark, Jerry Armenta. The others,
11 there's VICAR charges, but they weren't murder.

12 Q. And they got to invite some of their
13 family members to this party?

14 A. Some of them had family members there,
15 yes.

16 Q. That's not something that's offered to the
17 general prison population, is it?

18 A. I don't believe so. Not at that facility,
19 no.

20 Q. That was kind of extraordinary?

21 A. Yes.

22 Q. They'd also be given extra tier time; is
23 that right?

24 A. They were given Level 4 privileges. My
25 understanding is, it wasn't extra; that they were

1 afforded what a Level 4 inmate would have, which
2 they qualified for when they renounced the gang.
3 However, they were being held in a Level 6 facility,
4 so that's the nuance there.

5 Q. So they got extra phone calls?

6 A. They did.

7 Q. Extra tier time?

8 A. Well, again --

9 Q. Let me ask -- extra family time
10 visitation?

11 A. Yes.

12 Q. And that's all because they were
13 cooperators who had renounced.

14 A. Yes.

15 Q. In some of your discussions with some of
16 these cooperators, did you talk to them about the
17 effects of segregation and solitary confinement?

18 A. I didn't ask that question, but it was --
19 some of the cooperators talked about that, yes.

20 Q. I'm not sure who this is concerning, but
21 do you recall testifying -- do you recall speaking
22 with him about the effects of segregation and
23 solitary confinement and answering yes?

24 A. Yeah, I'm not changing my answer. I'm
25 just saying, that's not one of the questions I seek

1 in my investigation, but it's often something, when
2 I'm speaking with someone who's done a lot of time
3 and I'm hearing their life story and their
4 experiences, they're telling me what it was like to
5 do so much time in solitary confinement.

6 Q. And they don't want to be in that --

7 A. Some guys like it, interestingly enough.
8 Others don't.

9 Q. Now, in regard to cooperators, you talked
10 about certain instructions that you gave them that
11 they had to follow or they were supposed to follow?

12 A. Yes.

13 Q. Did they always follow those instructions?

14 A. No.

15 Q. And if they don't follow your
16 instructions, it's hard for you to trust them; is
17 that right? I think that's a quote you've said
18 before.

19 A. I clarified that. I would today, that my
20 trust is limited. I can trust them in certain
21 situations, and in others I can't.

22 Q. A lot of the cooperators, not all of them,
23 had or have some pretty significant drug issues; is
24 that right?

25 A. Yes.

1 Q. Involving addictions to heroin,
2 methamphetamine, and the like?

3 A. Mostly heroin, but yes.

4 Q. It's a lot easier to get those kind of
5 drugs in a less secure prison; is that right?

6 A. They seem to get them in every prison.

7 Q. But it's easier in the less secure ones.

8 A. I imagine.

9 Q. The instructions that we talked about a
10 little bit required them to not break any laws; is
11 that right? While they were cooperating?

12 A. Yes.

13 Q. And it also allowed them, you know --
14 they'd have to waive any constitutional protections
15 against unlawful searches and seizures during the
16 entire period of agreement; is that right?

17 A. No, I created a document or a contract --
18 in this case I'll say a contract -- when I had
19 cooperators that were on the street, so that if I
20 wanted to search them, I didn't need a search
21 warrant. I could search them. They waived their
22 Fourth Amendment right. And they needed to agree to
23 that in order to work with me on the streets.

24 Q. And do you recall that part of it was, "I
25 consent to have my person, personal possessions,

1 automobiles, and residences searched by the FBI at
2 any time without probable cause or reasonable
3 suspicion during the period of time covered by the
4 agreement"?

5 A. Yes, I specifically wrote that.

6 Q. Let's go to searches first. Have you
7 conducted searches just of the witnesses here in
8 this case that will be walking in as people on the
9 street; they're not in prison. Have you conducted
10 any searches of their homes?

11 A. Yes.

12 Q. Sammy Griego?

13 A. His car and his person. His home -- he's
14 moved around quite a bit.

15 Q. How about Big Jake Armijo?

16 A. Yes.

17 Q. And that was because -- well, was it in
18 relation to the fact that he was doing some drugs
19 like heroin and methamphetamine while he was
20 released as a cooperator?

21 A. He had a dirty UA, so I think the
22 substance was heroin, yes.

23 Q. Do you think it was just heroin or would
24 you have to look at the document?

25 A. I'd have to look at it. Nevertheless, he

1 had tested positive for drug use.

2 Q. It wasn't marijuana or alcohol? It was
3 something more significant?

4 A. No. Did you want me to keep naming who I
5 searched or --

6 Q. Thank you. Go ahead.

7 A. Phillip Gonzalez, Grumpy.

8 Q. Was he grumpy when that happened? I'm
9 sorry.

10 A. He's got a tattoo of the grumpy elf or
11 whatever on the back of his head. Robert Lovato.
12 Lyman Serrano.

13 Q. Is he testifying in this trial?

14 A. I don't believe so.

15 Q. Let's just, if we can, limit it to them,
16 please.

17 A. Jimmie Joe Lucero. He's since deceased.

18 Q. So he's not going to be testifying in this
19 trial?

20 A. Sorry. Let me do a better job of that.

21 Q. That's all right. We've been going a long
22 time. Everybody is tired.

23 A. There may be some others.

24 Q. You know, we've talked about the tablets.
25 That would be an example of something that got

1 seized and searched; right?

2 A. Yes.

3 Q. But there was one -- the inmates that did
4 something wrong, they didn't get the tablets back;
5 right?

6 A. Correct.

7 Q. Leonard Lujan. They never were able to
8 search his; right?

9 A. Well, I believe Corrections searched all
10 of them, cooperators and defendants.

11 Q. Do you recall Leonard Lujan completely
12 destroyed his and smashed it up into little pieces,
13 so it couldn't be tested?

14 A. No, sir.

15 Q. During the time these cooperators were in
16 this pod together -- I take it they don't live
17 together in a big pod anymore? All of them, I mean?

18 A. No.

19 Q. They kind of got split up once you found
20 out that they violated the rules with the tablets
21 and things like that; right?

22 A. Yes.

23 Q. But before that happened, you had to go to
24 that cooperator pod on a number of occasions for
25 issues that occurred with these cooperators.

1 A. Yes.

2 Q. Some of them were minor, but others were
3 more serious?

4 A. I think most of them were minor.

5 Q. Sometimes it was to sign receipts for
6 their payments?

7 A. Yes.

8 Q. When they had to sign the receipts for
9 payments, did you do that secretly, or was it just
10 right there?

11 A. It was one at a time, but I don't want to
12 say it was secret. They would be pulled out to a
13 room away from the pod, and I would briefly meet
14 with them and they would sign.

15 Q. Are you aware of whether they compared
16 notes with each other on how much they were each
17 getting?

18 A. I can think of at least one instance where
19 they did, because somebody made a comment about
20 that.

21 Q. Tried to hit you up for more?

22 A. Yeah.

23 Q. Did you have some concerns about the fact
24 that so many of these cooperators were being housed
25 in the same living unit?

1 A. Yes.

2 Q. And one of those overarching concerns that
3 you had was that they could interact freely with
4 each other.

5 A. To some extent, yes.

6 Q. And another one was, you were concerned
7 they might get their stories straight with each
8 other, prepare their stories?

9 A. That's a concern.

10 Q. Did the FBI ask these cooperators, you
11 know, kind of as a protective measure, to allow
12 there to be a listening device in their pod so the
13 FBI could see if cooperators were trying to
14 coordinate their stories or prep for trial together
15 or things like that?

16 A. They're all represented.

17 Q. But nobody asked their lawyers if that
18 could happen, that you're aware of?

19 A. No.

20 Q. Now, one of the things that caused that
21 group to be separated from each other -- and I don't
22 want to get into too many details about this -- but
23 was that several of the cooperators used their
24 increased privileges meeting with their wives or
25 girlfriends to do some inappropriate things with

1 them; is that right?

2 A. Four men did.

3 Q. And we're talking about having sexual
4 contact at some level with them?

5 A. Correct.

6 Q. And in fact, specifically with Billy
7 Cordova, who is one of the witnesses that's going to
8 be testifying in this case, there is actually
9 videotape of what had happened with him and his
10 wife.

11 A. There is video in all four circumstances.

12 Q. I'm not going to show that video, but just
13 very briefly, did Mr. Cordova have sexual
14 intercourse with his wife in the presence of his
15 minor children on four different occasions?

16 A. No, on two.

17 Q. On two?

18 A. Two of four.

19 Q. He's still a cooperator; right? Or at
20 least he's cooperating to testify?

21 A. He's agreed to testify. He's no longer an
22 FBI informant.

23 Q. Did Mr. Cordova also continue to use drugs
24 after he became a cooperator?

25 A. Yes.

1 Q. And Mr. Cordova has actually testified
2 under oath in a previous proceeding not involving
3 any of these defendants; right?

4 A. More than one.

5 Q. And were you present for that testimony?

6 A. I was.

7 Q. And did he take an oath?

8 A. Yes, sir.

9 Q. And did he swear under oath that the
10 claims of him using drugs while being a cooperator
11 were untrue?

12 A. I think so. I just recall that he was
13 confused about the question. But in my mind, I
14 think he may have.

15 Q. That caused you a concern, didn't it?

16 A. Yes.

17 Q. And in fact, you previously testified that
18 your concern was that anytime somebody lies under
19 oath, that's a significant problem. "It sounded
20 like to me, from what I witnessed, that he was
21 confused about the question and he had some
22 difficulty with that question, in understanding, and
23 only he would know what that was. I don't know."

24 And then you'd indicated that you thought
25 he was dishonest?

1 A. My gut feeling is, he may have been. But
2 I'll give him the benefit of the doubt, and I would
3 want to ask him more questions about it, what he
4 understood the questions to be.

5 Q. Has he been prosecuted for that drug
6 usage?

7 A. No.

8 Q. Has he been prosecuted for perjury, that
9 you know of?

10 A. No.

11 Q. Mr. Cordova has made, I believe -- at
12 least if I have all of the reports -- he's made
13 seven different -- been subject to seven different
14 interviews by the FBI?

15 A. Perhaps. It's definitely more than one,
16 more than two.

17 Q. In all of the interviews prior to the last
18 one -- let's talk about the last one. That was on
19 April 2 of 2018. Does that sound about right?

20 A. Probably, but I'll mention that these are
21 ongoing and there may be more.

22 Q. Okay. Prior to the April 2nd one, would
23 you accept my representation that there have been
24 six prior interviews of Mr. Cordova?

25 A. That sounds about right.

1 Q. And in none of those -- well, I'll
2 actually move on. We'll ask Mr. Cordova about this.

3 Was Mr. Cordova dealing drugs in a
4 correctional facility after he became a cooperator?

5 A. I'm not sure.

6 Q. Was there some evidence that he was that
7 was collected at Sandoval County?

8 A. It doesn't sound familiar to me.

9 Q. Now, these cooperators -- just talking
10 about the various things they did, one of the
11 cooperators actually even had sexual relations with
12 a correctional officer; is that right?

13 A. I think he may have. He didn't tell me
14 that he did, but I presume he did.

15 Q. Have others -- have you developed evidence
16 that others have dealt drugs while they're in
17 prison, other cooperators?

18 A. I won't say that I've developed evidence,
19 but I have heard them testify that they did. I
20 suppose that's evidence, actually, so yes. I just
21 want to be clear, I don't have physical evidence of
22 it.

23 Q. There are, in some instances, reports the
24 Department of Corrections has produced that talk
25 about some of these events where some of the

1 cooperators are doing things illegally.

2 A. Yes. And not only the Department of
3 Corrections, but the different county jails that
4 they've been housed at.

5 Q. And I think you previously testified that
6 the cooperators have never stopped committing
7 crimes.

8 A. Did I say that?

9 Q. Well, I don't testify here, but I think on
10 February 26, 2018, at page 205 you said, "These guys
11 have never stopped committing crimes or doing bad
12 things."

13 A. I remember saying that. When I said,
14 "These guys," I don't know if I was talking about
15 the defendants and the cooperators or just everybody
16 in the SNM.

17 Q. Okay. Well, I'll ask the question before
18 it. "Question: Well, when did you become aware of
19 the pattern of criminal activity of these Government
20 witnesses?"

21 And your answer was: "These guys have
22 never stopped committing crimes or doing bad
23 things."

24 A. They haven't.

25 Q. So it wasn't about the defendants. It was

1 about the witnesses when you testified; is that
2 correct?

3 A. Yes.

4 Q. Okay. I want to talk to you about Leroy
5 Lucero. His nickname was Smurf; is that right?

6 A. Yes.

7 Q. And was there another person who was named
8 Smurf?

9 A. Yes.

10 Q. Was that Angel Munoz?

11 A. Oh, then there's three. I think they
12 called him Papa Smurf sometimes.

13 Q. Okay. And is "smurf" a term that's used
14 by people who cook up crack cocaine? Do you know
15 that?

16 A. No. I know the history of Leroy's name,
17 but it didn't have anything to do with that.

18 Q. Mr. Lucero was a subject. You did a
19 subject interview with him; is that right?

20 A. I've interviewed him. I don't know that
21 I've done a subject one.

22 Q. Did you participate in an interview with
23 him in earlier this year, in January, I think it
24 was?

25 A. At his house? Yes.

1 Q. During that interview, did he talk to you
2 about being on the phone prior to the murders, the
3 2001 murders?

4 A. Yes.

5 Q. And that he was talking to an individual
6 by the name of Angel Munoz?

7 MR. CASTELLANO: Objection, hearsay.

8 MR. CASTLE: I'm offering it for a
9 nonhearsay purpose, Judge, because I'm going to
10 follow up with whether they were able to obtain that
11 phone call from the recordings.

12 THE COURT: Let me hear the question first
13 and then let me know what -- are you going to use
14 the statement in your question?

15 MR. CASTLE: I am, and that's why --

16 THE COURT: Why don't you come up, then,
17 and let me hear what it is.

18 (The following proceedings were held at
19 the bench.)

20 MR. CASTELLANO: So I think the follow-up
21 question will be whether he was able to corroborate
22 that hearsay.

23 THE COURT: Why don't I hear the question
24 first so I have it in mind.

25 MR. CASTLE: If possible, I'm going to

1 ask -- there's two questions I was going to ask, so
2 the Court will know. The first one is: During that
3 interview, did Mr. Lucero talk about being on the
4 phone prior to the murder with an individual by the
5 name of Angel Munoz? And if the answer is yes, then
6 was that conversation concerning the murders that
7 were about to occur? If yes, then I was going to
8 ask: Did you get ahold of that phone call
9 recording? And then the question would be about the
10 recording and the effort made to obtain the
11 recordings.

12 MR. CASTELLANO: But the rest of that
13 conversation deals with the fact that once --

14 THE COURT: Do you have a problem about
15 that much coming in?

16 MR. CASTELLANO: I don't. I do have a
17 problem with opening the door to the rest of the
18 statement, because Leroy Lucero will say that
19 Mr. Munoz told him that Billy Garcia was arriving at
20 the facility and was going to take care of business.
21 So it opens up the door to the fact that Billy
22 Garcia was going to arrive at the facility and clean
23 house.

24 MR. CASTLE: I'm not going to question Mr.
25 Lucero, just ask about the phone call.

1 THE COURT: Sounds like what you're asking
2 the Government doesn't object to, and after that
3 we'll take it a question at a time. I'm not ruling
4 whether it opens it or not. I need more context,
5 but it sounds like they don't object.

6 MR. CASTELLANO: I do object. If the
7 Court is finding it doesn't open the door, then we
8 have an unfair inference for those questions, and
9 don't get to complete the rest of the statement.

10 THE COURT: Let me hear it. I'm not
11 making a ruling whether it opens the door until I
12 hear it all, but you can ask those questions.

13 (The following proceedings were held in
14 open court.)

15 THE COURT: All right. Mr. Castle.

16 BY MR. CASTLE:

17 Q. Agent, during that interview with
18 Mr. Lucero, did he talk to you about a conversation
19 he'd had with Angel Munoz a few days before the
20 murders happened, the 2001 murders happened?

21 A. Yes.

22 Q. Were you able to go back and get a copy of
23 that phone call from -- you know, at the facility?

24 A. No.

25 Q. It's your understanding they had the

1 ability to record phone calls back then?

2 A. Yes.

3 Q. Was it your understanding that Mr. Lucero
4 was a shot-caller for some period of time with the
5 SNM?

6 A. Yes.

7 Q. And that after the 2001 murders that his
8 stature in the SNM rose, didn't it?

9 A. I don't know that it ever changed until he
10 dropped out. He was always, I think, regarded as a
11 senior member and well-respected.

12 MR. CASTLE: I have no other questions,
13 Your Honor.

14 THE COURT: Thank you, Mr. Castle.

15 Who wants to go next?

16 All right. Mr. Lahann.

17 CROSS-EXAMINATION

18 BY MR. LAHANN:

19 Q. Good afternoon, Agent Acee.

20 A. Good afternoon, Mr. Lahann.

21 Q. How many parties, pizza or otherwise, have
22 you joined these gentlemen at?

23 A. None.

24 Q. Mr. Patterson paroled out of the
25 Department of Corrections in 2002; is that correct?

1 A. I believe so.

2 Q. And until marshals showed up at his door
3 in 2015, he had not returned to the Department of
4 Corrections, had he?

5 A. I'm not sure, but I don't think so.

6 Q. You said as your operation began, you
7 decided to do some controlled buys with some guys on
8 the street?

9 A. Yes, sir.

10 Q. You didn't do that with everybody, did
11 you?

12 A. Like every SNM member? No.

13 Q. Or associates, or what you call
14 associates?

15 A. No.

16 Q. For example, you never tried to do an
17 undercover buy with Mr. Patterson, did you?

18 A. He was never the target of a buy, no.

19 Q. Okay. And as a matter of fact -- and I
20 assume it has something to do with the resources of
21 your investigation -- you want to do the control
22 buys with guys that you pretty much know are selling
23 out on the streets; is that right?

24 A. Yes.

25 Q. You had no reason to believe that of

1 Mr. Patterson, did you?

2 A. All of our buys were done in Albuquerque.
3 I don't -- to answer your question specifically, I
4 don't recall having information that Mr. Patterson
5 was selling drugs in Silver City.

6 Q. He was pretty low on your radar; is that
7 right? Is that fair to say?

8 A. I didn't view him as a leader. He was on
9 the radar. Does that answer the question?

10 Q. Fair enough. While in custody or
11 otherwise, you've not attempted to get any
12 undercover recordings of Mr. Patterson, have you?

13 A. No. That's difficult to do. Not
14 impossible, but no.

15 Q. As a matter of fact, there are no
16 recordings and there are no jail calls with
17 Mr. Patterson ever admitting culpability to any
18 crime, is that correct, in this case?

19 A. Yes.

20 Q. You're aware, as the case agent and
21 somebody that spent a lot of time looking at all of
22 the evidence in this case -- and I think we're up to
23 Bates No. 70314, according to last count -- you're
24 aware that when Mr. Garza was discovered deceased in
25 his cell, that basically there was a lockdown of the

1 pod and all of the cells in the pod were searched;
2 isn't that right?

3 A. Yes.

4 Q. And that shakedown revealed no drugs. No
5 heroin was found; isn't that right?

6 A. Yes.

7 Q. And no weapons were found except for a
8 knotted shoestring that was found in Mr. Chacon's
9 cell; isn't that right?

10 A. Yes.

11 Q. And that shoestring -- it wasn't a laundry
12 bag enclosure. It was a shoestring; isn't that
13 right?

14 A. If we're talking about the same one, it
15 was, like, tied in a hangman's noose?

16 Q. Yes.

17 A. Yes. I remember that.

18 Q. Knotted on both ends; isn't that right?

19 A. Yes.

20 Q. So somebody presumably could wrap that
21 around their hands and do whatever they needed to
22 do?

23 A. Yes.

24 Q. That item was found in Chacon's cell, not
25 in the cells of anybody in this courtroom; is that

1 right?

2 A. Yes.

3 Q. As a matter of fact, it was tucked into a
4 toilet paper roll; isn't that right?

5 A. I thought it might have been a soap box,
6 but something similar, yes.

7 Q. And that was the only thing resembling a
8 weapon that was found in that particular pod.

9 A. Yes.

10 Q. You're aware -- and I assume that the
11 reason the Government put you on to begin with is to
12 give the history of the case and the history of your
13 investigation. You're aware in that history that
14 there was a serious dispute between the State
15 Police, who investigated the crime, and the
16 Department of Corrections at the time, who had their
17 own theories about what happened with that murder?

18 MR. CASTELLANO: Objection, calls for
19 hearsay.

20 THE COURT: I'm thinking that might. I
21 think you can ask him if there is a dispute, but
22 let's not get into the details.

23 BY MR. LAHANN:

24 Q. And I'll leave it with that. Are you
25 aware through your investigation of the history of

1 this case of any dispute between the Department of
2 Corrections and the State Police regarding the
3 causation of death in this case?

4 A. My recollection is: It's not as much with
5 the causation, but the events leading up to it and
6 then who the players were. I saw that there was
7 some discussion about that.

8 Q. And that is what led to -- criminal
9 charges were never filed by the state authorities in
10 this case; isn't that right?

11 A. That's correct.

12 MR. LAHANN: No further questions.

13 THE COURT: Thank you, Mr. Lahann. Anyone
14 else have cross-examination? Mr. Benjamin?

15 MR. BENJAMIN: Yes, Your Honor. If I
16 could have a moment, Your Honor, I feel like I'm
17 moving.

18 THE COURT: Sure. Take your time.

19 CROSS-EXAMINATION

20 BY MR. BENJAMIN:

21 Q. Good morning. I guess it is barely, isn't
22 it, Agent?

23 A. We've just moved into the afternoon, sir,
24 I think.

25 Q. Actually, I guess I just want to start

1 with one question. You don't have a picture of
2 Angel DeLeon, do you?

3 A. Not in my pocket.

4 Q. Okay. He's the one that I don't think
5 we've seen. Do you have a picture of Angel DeLeon,
6 I guess, recent, post-2001 timeframe or so?

7 A. I don't want to comment on that.

8 Q. Okay. How many -- you said there were 36
9 individuals that were arrested or indicted in Phase
10 1; correct?

11 A. I hope I said "approximately," but yes.

12 Q. Let's have an agreement. The numbers I'm
13 going to ask you for right now, I'm not going to do
14 hard math with. Okay? We can go with approximates.

15 A. Okay.

16 Q. And then how many did you add in Phase 2
17 and Phase 3?

18 A. Phase 2 was, I think, 40. And at times,
19 Mr. Benjamin, I've been asked not to talk about
20 other cases or arrests, so...

21 Q. Okay.

22 A. The first one might have been more than
23 36, but I was limited in how I could respond.

24 Q. Okay. I guess what I'm looking for is,
25 let's go with the total number. I think at one

1 point in time you'd given us a number of 90 or so;
2 is that right?

3 A. Yes, I believe we've arrested around 116
4 members or associates and charged about 90
5 federally.

6 Q. Okay. How many -- and once again, I'm
7 just looking for a number. I'm not looking for any
8 names right now. How many of those are cooperating?

9 A. At least half cooperated. Perhaps more.

10 Q. How many of those 116 -- and I'd like to
11 keep it to that number, because that gives us a base
12 to work with -- are sex offenders?

13 A. Arrested or cooperating?

14 Q. Well, are the half that's cooperating not
15 included in the 116?

16 A. Fair enough. So we're going to go with
17 116. I just want to make sure --

18 Q. I understand. So we're on the same
19 bookkeeping number, so to speak.

20 A. I can think of three, four. I've arrested
21 four that technically are sex offenders.

22 Q. Okay. And let me go back and clarify our
23 number. We've got 116 arrests. We've got half of
24 those that you thought were cooperating. How many
25 outside of that do you think are cooperating? And

1 once again, just a number; not any identities or
2 anything. How many more are cooperating that aren't
3 included in that 116 half?

4 A. About a dozen.

5 Q. Okay. He paroled out of the New Mexico
6 Department of Corrections in 2005; correct?

7 A. I believe that's correct.

8 Q. Okay. And you didn't do any controlled
9 buys against Mr. Gallegos?

10 A. No, sir.

11 Q. Okay. Moving to the 2001 investigation,
12 that investigation, are you aware of Mr. Gallegos
13 working in the kitchen during the time of that, the
14 March 25, March 26, 2001?

15 A. I have seen paperwork that indicated he
16 did have a job in the kitchen.

17 Q. Okay. And you're saying "paperwork," but
18 the logs showing that he was signed out and went to
19 the kitchen haven't been produced or preserved;
20 correct?

21 A. Not that I've seen.

22 Q. I guess -- do you have any doubts that he
23 was on the kitchen detail?

24 A. No.

25 Q. Let me fast-forward to March 17, 2015.

1 Okay?

2 A. Okay.

3 Q. You used an interesting phrase I've never
4 heard before, but it's probably a good description.
5 This is a road kill case; right?

6 A. Yes.

7 Q. And that means this was a State
8 investigation that you had nothing to do with, and
9 then later decided that you wanted to prosecute.

10 A. We picked it up.

11 Q. Right. And as part of that case, you
12 essentially -- when you adopt a case, you pull all
13 the -- I mean, because when you adopted this case,
14 you adopted this case probably roughly a year later;
15 right?

16 A. Yes.

17 Q. Okay. So we're at March of 2016. And a
18 year later you adopt this case. You request the
19 reports?

20 A. Yes.

21 Q. You request evidence?

22 A. Yes.

23 Q. And sometimes take custody of it,
24 sometimes leave it in the State Police custody -- or
25 the arresting agency's custody.

1 A. Yes.

2 Q. Sorry. I said State Police.

3 A. Yes.

4 Q. This was Valencia County Sheriff's Office;
5 correct?

6 A. Yes.

7 Q. And essentially you have what you have;
8 right?

9 A. Yes.

10 Q. Okay. But yet when you adopt it, you make
11 determinations about what to do with it, how to
12 phrase it, and what you evaluate it as.

13 A. I review it.

14 Q. Okay. Sorry. I thought you were going to
15 add something after "I review it."

16 And when you reviewed this case -- and
17 we're talking about this case being what's been
18 charged as an assault with a deadly weapon upon Jose
19 Gomez; correct?

20 A. Yes.

21 Q. By Joe Gallegos.

22 A. Yes.

23 Q. And you charged this as having caused
24 serious bodily injury; right?

25 A. Yes.

1 Q. Okay. What was the serious bodily injury
2 that was caused?

3 A. He was stabbed in the hand.

4 Q. Okay. With what?

5 A. A knife.

6 Q. Okay. And that knife was not recovered?

7 A. No.

8 Q. That knife was not photographed?

9 A. No.

10 Q. Okay. The officer -- had you heard the
11 911 call before yesterday?

12 A. No.

13 Q. Okay. The reports and the 911 call both
14 discuss a firearm or a gun; correct?

15 A. Yes.

16 Q. And can we agree that there was no gun
17 involved?

18 A. Yes.

19 Q. And then the report -- Deputy Fernandez,
20 Roque Fernandez, describes a minor laceration on the
21 hand in the report; right?

22 A. Yes.

23 Q. Okay. What's the definition of "serious
24 bodily injury"?

25 A. As I sit here, I would not want to take a

1 stab at that.

2 Q. Something causing permanent disfigurement
3 or likely to cause death?

4 MR. CASTELLANO: Your Honor, let me object
5 at this time. The charge is actually assault with
6 dangerous weapon and not serious bodily injury.
7 That's Count 13, I believe.

8 MR. BENJAMIN: It is, Your Honor. This
9 goes to the statements --

10 THE COURT: I'll let you ask your
11 questions the way you want. Overruled.

12 BY MR. BENJAMIN:

13 Q. Does that sound like a fair description?

14 A. Could you say that again, sir?

15 Q. Okay. And I'm quoting another statement
16 because, off the top of my head, I can't give you
17 the federal definition either. Okay?

18 A. Thank you.

19 Q. "Likely to cause serious impairment or
20 death."

21 A. As the definition of great bodily injury,
22 I think that's pretty close.

23 Q. And Deputy Roque Fernandez describes this
24 as a minor laceration in between his thumb and
25 forefinger; right?

1 A. Yes.

2 Q. And do you remember talking to Deputy
3 Fernandez about that?

4 A. No, and I don't know that he's still
5 employed there.

6 Q. Did you talk to Sergeant Hall about that?

7 A. What is his first name, if you know, sir?
8 Sergeant? I talk to a lot of guys down there, but
9 they're pretty transient at that agency.

10 Q. Okay. I'll go with that. I think it's
11 Steven. Does that sound familiar?

12 A. Yes, I think I've talked to him, and -- I
13 think so.

14 Q. Okay. And has anybody described something
15 to you other than a minor laceration?

16 A. Yes.

17 Q. Who?

18 A. The victim.

19 Q. Okay. And this is the victim who told you
20 that when he calls 911, he says he was shot in the
21 hand; right?

22 A. Yes.

23 Q. And he doesn't say he was shot at. He
24 says he was hit by a bullet, essentially; right?

25 A. He thinks that might have been what

1 happened, yes, at that time.

2 Q. And do you know where he went that day?

3 A. Afterward?

4 Q. Do you know where he was hiding?

5 MR. CASTELLANO: Objection, calls for
6 speculation.

7 THE COURT: Well, it's a foundational
8 question. Overruled. Just yes or no.

9 A. No.

10 BY MR. BENJAMIN:

11 Q. Okay. Do you know if he was found hiding
12 under a metal trailer?

13 MR. CASTELLANO: Objection, calls for
14 speculation and hearsay. He has to rely on other
15 people's reports if he wasn't there, Your Honor.

16 THE COURT: Well, let's first see if he
17 even knows an answer, and then we can determine
18 whether we're going to allow anything further.

19 A. No, sir.

20 BY MR. BENJAMIN:

21 Q. Okay. Have you gone out to the scene
22 where he was located?

23 A. No.

24 MR. BENJAMIN: Your Honor, may we approach
25 briefly?

1 THE COURT: You may.

2 (The following proceedings were held at
3 the bench.)

4 MR. BENJAMIN: The file that was requested
5 to be unsealed, Your Honor, still hasn't been
6 unsealed. And I guess I'm going to -- I walked into
7 this because I talked to Ms. Armijo about this at a
8 break and then I walked into it. One of the issues
9 come up, I'd like to know whether you're going to
10 produce this.

11 MS. ARMIJO: I know it's not unsealed on
12 the docket. If the Court gives permission, I
13 printed it downstairs, and I can go get it. I'll go
14 down and get it.

15 MR. CASTELLANO: I'll continue to object
16 to hearsay if he asks Agent Acee questions about
17 what was in the other police reports, because he
18 wasn't there, so he would have no personal
19 information. The only information that Agent Acee
20 will have is information read from police reports.
21 So he wasn't there that day. So any other questions
22 will be speculation and hearsay.

23 THE COURT: Well, it sounds like he
24 doesn't know some of this stuff at all. I guess I
25 can't predict exactly where we'll go, but generally

1 if he's getting his information just from other
2 sources or --

3 MR. BENJAMIN: Your Honor, what I plan on
4 going into is the fact that he did a sworn
5 affidavit, a criminal complaint, based on testimony
6 he's claiming he doesn't know.

7 MR. CASTELLANO: Based on hearsay -- a
8 complaint obviously can contain hearsay, and he's
9 trying to get hearsay in through this witness.

10 THE COURT: Well, if it's a statement that
11 Mr. Acee has made and you're going to impeach him, I
12 guess, on it, I may have to give a limiting
13 instruction. But I do think if it's something he
14 said under oath, that probably is fair game. So I
15 may have to give a limiting instruction that these
16 things are strictly for impeachment purposes and
17 can't be considered for the truth of the matter.

18 MR. CASTELLANO: It's also not a Jencks
19 statement. Under the law in this district -- judge
20 Parker wrote an opinion a number of years ago in
21 which, for preliminary hearing purposes, defense
22 counsel tried to get reports upon which agents
23 relied when they wrote their complaints. Those
24 reports have not had to be produced because the
25 agent adopts those as his or her own. I don't

1 remember the name of the case. I can get it for the
2 Court. It doesn't make it a Jencks statement unless
3 the witness specifically adopts those statements as
4 his or her own.

5 MR. BENJAMIN: I'm planning on asking
6 about his statements that he made under oath.

7 THE COURT: Just say these are being used
8 for impeachment purposes and they can't consider
9 them for the truth.

10 MR. CASTELLANO: I don't know how he can
11 be impeaching Agent Acee. Those aren't his
12 statements.

13 THE COURT: It's his affidavit.

14 MR. BENJAMIN: It's his criminal
15 complaint.

16 MR. CASTELLANO: They're not his
17 statements contained -- he's conveying hearsay, and
18 unless there is something in the affidavit in which
19 he states, "I have personal knowledge," I would
20 agree that would be his statement. But if he's just
21 conveying hearsay from other police reports, how is
22 Mr. Benjamin going to impeach him on other people's
23 statements?

24 MR. BENJAMIN: Your Honor, this criminal
25 complaint -- and I can lay a foundation, if this is

1 the issue -- but this criminal complaint was drafted
2 after a meeting with Jose Gomez; that he then
3 drafted a criminal complaint, he went through that
4 criminal complaint, and the facts that were in that
5 interview appear in this criminal complaint that he
6 made.

7 THE COURT: Well, I think the first thing
8 you're going to have to do is ask him first a
9 question that is going to be eliciting admissible
10 evidence. If the initial question that you asked
11 him is not going to be eliciting admissible
12 evidence, then you can't impeach him, because there
13 is nothing to impeach. He's not going to be allowed
14 to testify.

15 So your first problem may be -- and I
16 still think that it's sound to impeach somebody with
17 their own affidavit and then they give an
18 instruction saying that their only use of it is for
19 impeachment purposes, but if you can't ask a
20 question of him in the beginning that elicits
21 admissible evidence, then I probably will sustain
22 the objection, and you don't have anything to then
23 impeach him on.

24 MR. BENJAMIN: I do have those, I guess.

25 THE COURT: I may just have to take it a

1 question at a time and everybody get the feel of
2 what I'm doing. But it may be difficult for you to
3 ask him if the initial question is asking something
4 that would be inadmissible. For example, if all
5 this information is coming from a police report,
6 there may not be anything to impeach him with.

7 MR. CASTELLANO: The same thing if he took
8 statements from Jose Gomez. Those statements are
9 hearsay.

10 THE COURT: Whatever source.

11 MR. BENJAMIN: From their admissions, the
12 ones that he charged him with are admissions. He
13 tells him that.

14 MR. CASTELLANO: But he's trying to
15 introduce Jose Gomez's statements through Agent
16 Acee. That is hearsay.

17 MR. BENJAMIN: He's a party opponent.

18 MR. CASTELLANO: Jose Gomez is not a party
19 opponent.

20 THE COURT: I'm not sure how Jose Gomez is
21 a party opponent.

22 MR. BENJAMIN: We might as well clear this
23 up at the bench, Your Honor. My issue is: During
24 the interview Agent Acee says, "Why don't you tell
25 me about your drug transactions? Because if you

1 tell me about them, there is no basis; I can use
2 that for conspiracy. But you're the one that gets
3 prosecuted for those." Wouldn't it be a basis for
4 the motivation to essentially testify and be charged
5 federally versus being charged statewise, which is
6 what he was there on, a revocation sex offender
7 charge.

8 The second issue is: He's asked and then
9 he actually wrote out the statement for Jose Gomez,
10 the statement that then was reduced to a written
11 form that was put in the criminal complaint.

12 THE COURT: I think some of that you can
13 probably ask and elicit some information. It may be
14 the statements themselves are going to --
15 Mr. Castellano may -- and I probably will sustain
16 the objection. Other things, mechanically what
17 occurred and those sort of things, are probably fair
18 game.

19 MR. BENJAMIN: I think I might be getting
20 the idea where the Court is telling me I can go.

21 THE COURT: All right. Let's give it a
22 try.

23 (The following proceedings were held in
24 open court.)

25 THE COURT: All right, Mr. Benjamin.

1 MR. BENJAMIN: Thank you, Your Honor.

2 BY MR. BENJAMIN:

3 Q. Do you remember drafting a criminal
4 complaint on March 14, 2016, against Jose Antonio
5 Gomez?

6 A. Yes.

7 Q. And you drafted that complaint after
8 having met with Jose Gomez that day; correct?

9 A. I don't know if I met with him that day,
10 but it was after meeting him that I drafted the
11 complaint.

12 Q. Okay. Actually, I apologize. Let me take
13 that back. Do you remember meeting with him on
14 March 9, 2016?

15 A. Yes.

16 Q. Thank you for the correction, Agent. At
17 that time you sat down with Mr. Gomez, and you were
18 seeing him shortly after the February 27, 2016,
19 assault; correct?

20 A. Yes.

21 Q. Okay. February 27, 2016, an assault on
22 Jose Gomez. March 9 is when you sat down and talked
23 to him for the first time; correct?

24 A. Is the year correct?

25 Q. 2016?

1 A. Yes.

2 Q. Yes. And keep in mind, you drafted -- I
3 started this with the March 17, 2015, assault.
4 That's the one that we listened to the 911 call on
5 yesterday.

6 A. Okay.

7 Q. And then approximately not quite a year
8 later but almost a few year later, on February 27,
9 2016, there is another assault on Jose Gomez;
10 correct?

11 A. Correct.

12 Q. And then you sat down with him essentially
13 11, 12 days later, on March 9.

14 A. Yes.

15 Q. Subsequent to that, you drafted and filed
16 a criminal complaint or an affidavit requesting
17 criminal -- federal criminal charges against Jose
18 Antonio Gomez.

19 A. I did.

20 Q. In drafting that criminal complaint, you
21 reviewed and relied on reports; correct?

22 A. Against Mr. Gomez I relied mostly on his
23 statements to me.

24 Q. Okay. And his statements to you were
25 given based upon you telling him, "Tell me what drug

1 trafficking actions you've occurred" -- and he had
2 an arm bandage, so you wrote those statements out
3 for him; correct?

4 A. Yes.

5 Q. Then at the end of them he's got a
6 scribbling, and it says, "Special Agent Acee wrote
7 these because my arm is messed up."

8 A. And he signed it, yes.

9 Q. But so you asked him about essentially --
10 I apologize, I just lost the number -- four
11 different times or gave you four different times
12 that he had essentially exchanged or essentially
13 distributed methamphetamine; correct?

14 A. I thought it was three, but I trust -- you
15 have the complaint there.

16 Q. Let me count them again.

17 A. But the gist of it is, yes, he told me
18 about drug deals he'd done. I recorded those, and
19 then sought to charge him with it.

20 Q. You sought to charge him with it. You
21 told him if he participated -- and this is my
22 word -- as a summary, would take care of him, charge
23 him federally, and then remove him from the state
24 proceedings that he was in; correct?

25 A. No, because he wasn't in any state

1 proceedings for drug trafficking. I quite simply
2 got that out of him, and then charged him with it.

3 Q. Do you remember telling him that those
4 charges were based solely on what he told you and if
5 he told you that, that was what was going to be the
6 evidence for those charges?

7 A. Perhaps something along those lines.

8 Q. Right. And he was telling you about three
9 different events, and you didn't have anything to
10 support those, other than what he was telling you.

11 A. Correct. I knew very little about -- I
12 didn't know, in some cases, anything about those
13 events.

14 Q. And you were doing that so that you could
15 essentially file charges on him and have control of
16 him; correct?

17 A. I don't know how much control I have, but
18 the first part of that, to file charges on him, yes.

19 Q. Okay. Because you wanted to use him as a
20 witness against Joe Gallegos; correct?

21 A. I wanted to charge everybody I met from
22 the SNM with a federal crime.

23 Q. Okay. And we'll come back to that. And
24 as part of the facts in this criminal complaint, you
25 outlined what you believe occurred on March 17,

1 2015; correct?

2 A. I need to look at it, sir. It's hard for
3 me to say what I did.

4 MR. BENJAMIN: May I approach, Your Honor?

5 THE COURT: You may.

6 A. Thank you. I hadn't seen this.

7 BY MR. BENJAMIN:

8 Q. Essentially two years old now; right?

9 A. Yes.

10 Q. As part of this complaint, you used
11 information from March 17, 2015; correct?

12 A. Yes.

13 Q. And in drafting this, you had reviewed and
14 read those reports; correct?

15 A. Not all of them, no.

16 Q. Okay. When you say "all of them," there's
17 probably two of them; right? The Valencia County
18 Sheriff's Office reports are not exactly detailed
19 or --

20 A. I didn't want to be insulting to that
21 agency, but that's my concern when I get stuff from
22 there.

23 Q. And that's a concern that then should --
24 did that lead you to then investigate or look into
25 what had happened that day?

1 A. With regard to the first assault, no.

2 Q. Okay. And you said that the -- correct me
3 if I'm wrong, but the only person who told you that
4 it was serious bodily injury caused that day was
5 Jose Gomez; correct?

6 A. He didn't give me a definition. He said
7 he got stabbed in the hand, and I consider that for
8 charging purposes a serious injury.

9 Q. Well, I think it would depend on what
10 stabbing in the hand occurred; right? Is that fair?

11 A. Yes.

12 Q. Okay. Because I had the quote/unquote
13 stock photo yesterday that had a little nick or
14 minor laceration on the hand; right? Do you
15 remember that?

16 A. Yes.

17 Q. Or if I stick a knife through your hand,
18 that's serious bodily injury, probably.

19 A. Yes, or nick a nerve or something like
20 that. Could be.

21 Q. And he didn't have any -- did you see
22 him -- do you know which hand he said he got stabbed
23 in?

24 A. Off the top of my head, no.

25 Q. All right. Did both of his hands seem to

1 work fine?

2 A. When I'm sitting there talking with them,
3 they don't, because that's why I'm writing the
4 notes.

5 Q. Point taken. Thank you. So did you adopt
6 the reports from the Valencia County Sheriff's
7 Office in order to draft this affidavit?

8 A. I reviewed them.

9 Q. Okay. Did you disagree with them?

10 A. Yes.

11 Q. And then did you use -- actually, let me
12 rephrase that. If I could have a moment. Do you
13 remember doing a 302 after your March 9 meeting with
14 Jose Gomez?

15 A. Yes.

16 Q. Do you remember how many SNM individuals
17 you said went to the address on February 27, 2016?

18 A. No.

19 Q. Okay. Would it help your memory if I
20 approach?

21 A. Yes, sir.

22 MR. BENJAMIN: May I approach, Your Honor?

23 THE COURT: You may.

24 BY MR. BENJAMIN:

25 Q. You're free to review the entire report.

1 A. The question is: How many SNM members
2 went to the house that day?

3 MR. CASTELLANO: Your Honor, I object to
4 hearsay, if he's just reporting what other people
5 told him about that incident.

6 THE COURT: I guess I'd better hear the
7 question first.

8 MR. BENJAMIN: I will rephrase the
9 question, Your Honor.

10 A. I think I see the sentence that answers
11 that question.

12 THE COURT: Before answering, give
13 Mr. Castellano an opportunity to hear the question.

14 A. Yes, sir.

15 BY MR. BENJAMIN:

16 Q. Did you, based upon information provided,
17 execute a report that listed a number of -- a
18 certain specific number of SNM members or associates
19 that went to the -- let me rephrase it -- that went
20 to Charlene Parker-Johnson's house?

21 A. Yes.

22 Q. How many people -- how many SNM
23 individuals were listed as going to
24 Ms. Parker-Johnson's house?

25 MR. CASTELLANO: Objection, hearsay.

1 THE COURT: And this is out of a police
2 report?

3 MR. BENJAMIN: This is out of his own 302,
4 Your Honor.

5 THE COURT: Well, sustained.

6 MR. BENJAMIN: Your Honor, I'm offering it
7 for essentially a purpose other than the truth of
8 the matter asserted. And if I can have a moment,
9 I'll approach and make that clear in a second.

10 THE COURT: Yeah, you're going to have to
11 approach, because I'm not seeing how it would be for
12 any other purpose.

13 MR. BENJAMIN: Your Honor, may I approach
14 the witness?

15 THE COURT: You may.

16 BY MR. BENJAMIN:

17 Q. If you refer to that, it's probably on
18 page 3, Agent.

19 A. Okay.

20 Q. Agent, in drafting this affidavit, did you
21 review your 302?

22 A. Yes.

23 Q. How many SNM members went to Charlene
24 Parker-Johnson's house, in your affidavit?

25 MR. CASTELLANO: Objection, hearsay.

1 THE COURT: Sustained.

2 BY MR. BENJAMIN:

3 Q. Is that number different than what -- the
4 number that you used in your 302?

5 MR. CASTELLANO: Objection, hearsay and
6 lack of foundation.

7 THE COURT: Yeah, I think sustained.

8 MR. BENJAMIN: Your Honor, if I may --

9 THE COURT: I think we're going to go 15
10 more minutes.

11 MR. BENJAMIN: Okay.

12 BY MR. BENJAMIN:

13 Q. You drafted another criminal complaint
14 against Jose Gomez; correct?

15 A. Yes.

16 Q. And in that complaint you stated that
17 there was a drug dispute between Jose Gomez and
18 Gallegos; correct?

19 MR. CASTELLANO: Objection, calls for
20 hearsay.

21 THE COURT: I think you're asking for
22 out-of-court statements here.

23 MR. BENJAMIN: Your Honor, I'm asking for
24 a bias purpose or motivation, is the reason for the
25 request.

1 MR. CASTELLANO: I don't think that goes
2 to Agent Acee's bias, Your Honor.

3 THE COURT: I think you're going to have
4 to explain that a little more to me. I'm not seeing
5 it.

6 MR. BENJAMIN: Your Honor, the proposed
7 reason for the basis of the charges is an interest
8 in Mr. Joe Gallegos to advance or move forward his
9 SNM membership. The criminal complaint simply lays
10 out that it was a basis of a drug dispute. It
11 doesn't mention SNM at all.

12 THE COURT: Well, I think you can just ask
13 that question.

14 BY MR. BENJAMIN:

15 Q. All right. Agent, I can rephrase that.
16 You listed the basis in -- do you remember drafting
17 another complaint on May 5, 2017, against Jose
18 Gomez?

19 A. I think so, but I have a question about it
20 to help clarify that. I'm not sure you would
21 answer, but I think I had a sealed and unsealed. Is
22 that what we're talking about?

23 Q. That would have been the first one that we
24 just discussed.

25 A. I think that was the sealed one.

1 Q. The one that we were discussing earlier?

2 A. Without reviewing all of them and having
3 some time to look, generally -- I'm hesitating
4 because sometimes we do a sealed complaint, and then
5 we'll do essentially the same complaint but changing
6 it somewhat before it's unsealed, if that makes
7 sense.

8 Q. It does, but there is nothing that would
9 be in the sealed -- sealing it wouldn't have
10 anything to do with SNM membership. It would have
11 to do with other information that you don't want to
12 be made public.

13 A. I agree with that.

14 Q. And the second complaint, from May of
15 2017, was for unlawful flight to avoid prosecution;
16 correct?

17 A. Oh, okay. So we're talking about -- I may
18 have had three complaints, then.

19 MR. BENJAMIN: May I approach, Your Honor?

20 THE COURT: You may.

21 A. I understand what you're asking about now.

22 BY MR. BENJAMIN:

23 Q. And if you'd like, Agent, you're free to
24 take a look at this.

25 A. Thank you. Yes, I know what this is.

1 Q. I changed gears. I apologize.

2 You stated in this complaint that the
3 dispute between Joe Gallegos and Jose Gomez was a
4 drug dispute?

5 MR. CASTELLANO: Objection, calls for
6 hearsay.

7 THE COURT: Sustained.

8 BY MR. BENJAMIN:

9 Q. You also referred to Joe Gallegos as an
10 SNM Gang member; correct?

11 A. I usually do.

12 Q. Okay. If we talk about validated gang
13 members, that's a Department of Corrections term;
14 correct?

15 A. Yes, it is. It's a designation within the
16 Department of Corrections.

17 Q. And we heard about security threat groups,
18 and that's where that comes from; correct?

19 A. Yes.

20 Q. Okay. We saw Joe Gallegos' picture
21 yesterday. He doesn't have any SNM tattoos;
22 correct?

23 A. I do not think he does.

24 Q. If he had, we can probably safely assume
25 we would have seen the photograph of it; right?

1 A. Yes.

2 Q. Okay. And are you aware of a listing by
3 the New Mexico Corrections Department in -- looks
4 like the date on this is July 24, 2015, that lists
5 Mr. Joe Lawrence Gallegos as not a validated SNM
6 Gang member?

7 MR. CASTELLANO: Objection, calls for
8 hearsay.

9 THE COURT: I think if you're using it to
10 show what's not in there, it would be. So
11 sustained.

12 MR. BENJAMIN: Your Honor, I think that
13 would go for impeachment purposes for the criminal
14 complaint that he essentially under oath stated that
15 he is.

16 THE COURT: Well, I'm going to sustain the
17 objection.

18 BY MR. BENJAMIN:

19 Q. Are you aware of the New Mexico Department
20 of Corrections' scoring system for validated -- or I
21 guess let me approach it this way. There is a
22 scoring system in the New Mexico Department of
23 Corrections; correct?

24 A. Yes.

25 Q. And it starts out with zero. Two points,

1 you're a suspect; and then all the way up to ten
2 points, you're a validated threat group member.

3 MR. CASTELLANO: Objection, lack of
4 foundation, unless Agent Acee works for the
5 Corrections Department, Your Honor.

6 THE COURT: Well, he said he had some
7 familiarity. If he doesn't know enough to answer
8 the question, he can say so. But he did say he had
9 some familiarity.

10 A. I do have some familiarity, and I have
11 reviewed those -- many of those forms.

12 BY MR. BENJAMIN:

13 Q. Okay. And are you aware if the Department
14 of Corrections classified Joe Gallegos as a
15 validated SNM Gang member?

16 MR. CASTELLANO: Objection, calls for
17 hearsay.

18 THE COURT: It's a yes-or-no answer. He
19 knows or doesn't know.

20 A. Yes.

21 BY MR. BENJAMIN:

22 Q. Okay. And they did not; correct?

23 MR. CASTELLANO: Objection.

24 THE COURT: That's sustained. Sustained.

25

1 BY MR. BENJAMIN:

2 Q. Are you aware of how many points Joe
3 Gallegos has under that scoring system?

4 MR. CASTELLANO: Objection.

5 THE COURT: Sustained.

6 MR. BENJAMIN: Without -- I guess what I'd
7 like to do is, there is -- actually, if I can have a
8 second to gather my thoughts, Your Honor, you said
9 you were going to take a break at 1:15?

10 THE COURT: Correct.

11 BY MR. BENJAMIN:

12 Q. Agent, are you aware of what a Kastigar
13 letter is?

14 A. Yes.

15 Q. And I'd like to talk to you generally
16 about what a Kastigar letter is. What is a Kastigar
17 letter generally?

18 A. It's a letter prepared by the United
19 States, specifically the U.S. Attorney's Office.
20 It's presented to a defendant and their attorney
21 before they debrief with the FBI or another law
22 enforcement agency.

23 Q. And the question I want to ask is: Why?

24 A. Well, we're going to get into my opinion,
25 if that's all right.

1 Q. Yeah.

2 A. Sure. So the Kastigar letter gives the
3 person that's about to talk to us some protections,
4 that they can speak to us and we won't take those
5 statements and use them against them. The letter
6 is, I think, two pages in length and there's more to
7 it than that, but from a street agent's perspective,
8 you hear some people call it a queen-for-the-day or
9 king-for-the-day letter. I don't want to say
10 immunity, because I think that's not accurate, but
11 it allows them to sit down and talk to us without us
12 using those statements against them.

13 Q. And it provides a benefit when it does
14 that; correct?

15 A. I guess so.

16 Q. They can tell you about other things, and
17 as long as you don't have information to link them
18 up to them, essentially, and I would say in a
19 roundabout way or in some other independent means,
20 you can't use those statements against them?

21 A. That is true.

22 Q. Okay. And so the purpose is to receive
23 information from somebody who wants to sit down and
24 talk with the Government?

25 A. I think the purpose is to encourage them

1 to shoot it straight and be honest.

2 Q. And the opposite of that, though, is if
3 they don't shoot straight, then that information can
4 and should be used against them, is what that letter
5 says; correct?

6 A. If they specifically lie, yes.

7 Q. Or if they omit things, as well?

8 A. Perhaps. I'm going off memory here.

9 Q. Okay. One issue is: You'd filed -- and
10 let's just stick with essentially Phase 1; 36,
11 approximately, defendants were brought into Phase 1.
12 Who makes the decision as to whether to bring in 36
13 defendants into an indictment or one defendant into
14 an indictment?

15 A. It's a process. I mean, I often push for
16 many more than we see get indicted. So I have to
17 present that to the prosecutors, and then they have
18 an internal process.

19 Q. Fair to say, if we just summed it up as
20 the Government, that would be a fair description;
21 right?

22 A. Yes.

23 Q. None of these individuals over here can
24 ask to be grouped together, and they can ask to be
25 separated, but that's not their decision, though;

1 right?

2 A. No.

3 Q. Okay.

4 MR. BENJAMIN: Your Honor, I apologize.
5 I'm going to go into essentially specific groups of
6 counts, and I guess my preference would be not to
7 start a line of questioning on a fact-based
8 scenario.

9 THE COURT: All right. We'll go ahead and
10 take our break.

11 This is our first lunch break during the
12 evidentiary portion of the trial, so I'm going to
13 remind you of a few things that are especially
14 important.

15 Until the trial is completed, you're not
16 to discuss this case with anyone, whether it's
17 members of your family, people involved in the
18 trial, or anyone else, and that includes your fellow
19 jurors.

20 If anyone approaches you and tries to
21 discuss the trial with you, please let me know about
22 it immediately.

23 Also, you must not read or listen to any
24 news reports on the trial. Please don't get on the
25 internet and do any research for purposes of this

1 case.

2 And finally, remember that you must not
3 talk with any person who is involved in the trial,
4 even if it doesn't have anything to do with the
5 trial. If you need to speak with me, simply give a
6 note to one of the court security officers or
7 Ms. Bevel.

8 I'll probably give these at the end of the
9 day when we head off for the weekend, but when we do
10 take breaks this afternoon, do keep them in mind.

11 All right. We'll be in recess for about
12 an hour. Have a good lunch.

13 (The jury left the courtroom.)

14 THE COURT: What am I looking for in these
15 materials? What's my task?

16 MS. ARMIJO: Your Honor, anything that
17 they felt that -- I believe one is, Mr. Eicker
18 believes those are not privileged materials. So I
19 believe specifically if you feel that those are
20 privileged or not. I believe that's --

21 THE COURT: Oh, he thinks these are not
22 privileged?

23 MS. ARMIJO: He believes those are not
24 privileged materials. And then the issue is if they
25 are not privileged, I guess the other thing --

1 THE COURT: I'll take a look at them.

2 MR. CASTLE: Judge, I just wanted to flag
3 an issue for the Court.

4 THE COURT: On these?

5 MR. CASTLE: Yes. Attorney-client
6 privileged materials are real easy to identify. It
7 might be a letter from you to your client; whereas
8 work product may not be that easy to identify. So
9 for example, let's say -- well, obviously, Leroy
10 Lucero is an interesting character for us, but --
11 and I have let that cat out of the bag, but let's
12 say I hadn't, and I went to my client with publicly
13 available documents about Mr. Lucero to share with
14 him: This is where we're going with the case.

15 If it's not contraband, and it's not
16 discovery with page numbers on it, then turning over
17 materials that we may have given to our clients for
18 a good reason can reveal our strategy.

19 So what I would encourage the Court to do
20 is for anyone who they obtained materials from, let
21 the defense counsel review them and make arguments
22 to the Court as to whether it's work product or not,
23 and whether they provided it to their client and
24 things of that nature before it goes to the
25 Government. It would have to done without the

1 Government present, because otherwise, that's
2 letting the cat out of the bag.

3 THE COURT: All right. I might give you a
4 nanosecond to tell me why it's wrong. My glancing
5 at it, I think it's probably something everybody can
6 get. But I'll look at it during the lunch hour.

7 All right. Y'all have a good lunch.

8 (The Court stood in recess)

9 THE COURT: All right. Let's go on the
10 record. I think we've got an attorney for every
11 defendant. All the defendants are in the room.

12 On these taint things, let me ask a
13 question here. Only one of them relates to a
14 defendant in the room. So it seems to me that maybe
15 on those two, I can just go ahead and produce those
16 to the Government. Anybody see a problem with that?
17 Okay.

18 So Mr. Beck, Mr. Castellano, if you want
19 to come pick this one up, do you want me to state it
20 on the record?

21 MR. COOPER: I'd like to know who they
22 are.

23 THE COURT: I'll state them on the record.
24 The first one is for defendant Daniel Archuleta, and
25 it's document 852. So it's the plea agreement for

1 Timothy Martinez. So I'll give you that.

2 The second one -- here, I'll give you,
3 Mr. Castle, a nanosecond there. I don't think
4 you'll have a problem with that production.

5 And the other one is a transcript, it
6 looks like, of the trial. I glanced at it. My
7 memory is, it was the trial, but I can't really get
8 a good sense of who the witness is. It looks like
9 it's a trial transcript, a portion of it. It was
10 from defendant Sergio Rodriguez. So we're talking
11 about three public documents, so...

12 MR. SINDEL: May I approach, Your Honor?
13 Mr. Beck?

14 MR. CASTLE: We want to make a record.

15 THE COURT: Do we need to take this up
16 before we bring the jury back in?

17 MR. SINDEL: Very quickly.

18 THE COURT: Well, if it doesn't need to be
19 done now, let's pick it up a little bit later.

20 MR. SINDEL: The only reason I want to do
21 it is, it has to do with the testimony of what I
22 anticipate will be another witness, Mario Rodriguez,
23 and I'm afraid that he may say certain things he
24 said in the first trial that are inappropriate, so I
25 wanted to bring it up before he testifies.

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1 THE COURT: Before he comes up, I'll
2 remember to bring it up.

3 All right. All rise.

4 (The jury entered the courtroom.)

5 THE COURT: All right. Everybody be
6 seated. Did everybody blow away out there? I
7 didn't go outside, but I can hear it. My mom said
8 that she was talking to my cousins who have a ranch
9 near Lubbock, and she's from Hobbs. She said he
10 texted her and said he saw her front yard blow by
11 yesterday. It's blowing all over this part of the
12 world.

13 All right. Mr. Acee, I'll remind you that
14 you're still under oath.

15 Mr. Benjamin, if you wish to continue your
16 cross-examination of Mr. Acee, you may do so at this
17 time.

18 MR. BENJAMIN: I do, Your Honor, and I'd
19 like to return to an area under 801(d)(2)(B), and I
20 would reurge the fact that the line of questioning
21 regarding the affidavits was against a statement --
22 was a statement offered against a party opponent and
23 one that the party manifested and adopted or
24 believed to be true when Special Agent Acee signed
25 the criminal complaint.

1 THE COURT: Well --

2 MR. BENJAMIN: Specifically one question,
3 Your Honor.

4 THE COURT: Well, why don't you approach?

5 MR. BENJAMIN: Okay.

6 (The following proceedings were held at
7 the bench.)

8 MR. BENJAMIN: Your Honor, specifically --

9 THE COURT: What is the statement you're
10 trying to get in?

11 MR. BENJAMIN: It's on March 9. He stated
12 that there was three SNM members that went to this
13 house, and then in an affidavit that he drafted --
14 and that's his 302 that he drafted -- and in his
15 affidavit March 14, I don't know how many days that
16 is -- I guess five days later -- he states there are
17 two individuals that go to the house. So I think
18 that goes to his attention to detail and
19 credibility, Your Honor, and I think that's grounds
20 for impeachment. The 302 is not a sworn statement,
21 but the affidavit -- if I could ask him to explain
22 the difference.

23 THE COURT: Well, but the 302 is -- he's
24 just taking down information people are giving him.

25 MR. BENJAMIN: Yes, Your Honor.

1 THE COURT: So that wouldn't impeach him
2 in any way, would it?

3 MR. BENJAMIN: The difference in the
4 statements does, because he doesn't have any new
5 information to change. The correct number is three.
6 Does that make sense, Your Honor? The affidavit is
7 incorrect.

8 THE COURT: Well, but there's no -- I
9 don't guess there is any problem with you
10 questioning him about what he told the Court to get
11 an arrest warrant or a search warrant, that it was
12 three; and you can ask him where he got that
13 information. But I'm not sure I would say the 302,
14 though, is a party admission. It's just his
15 reporting of what was told.

16 MR. BENJAMIN: Correct. But the 302 is
17 what was correct, and the affidavit is not.

18 THE COURT: Oh, I got it reversed.

19 MR. BENJAMIN: Yes, Your Honor.

20 THE COURT: Why don't you ask him about
21 the two; is that correct?

22 MR. BENJAMIN: The reason I'm raising it,
23 I got shut down on that before lunch, Your Honor.

24 THE COURT: Well, I'm not sure --

25 MR. BENJAMIN: I didn't explain it as

1 well.

2 THE COURT: Let's take it a question at a
3 time. I just have to see how it was asked and what
4 is asked.

5 MR. CASTELLANO: This is a separate
6 matter.

7 THE COURT: Now that you have that, I
8 probably should have made copies of that and
9 attached it to the clerk's minutes. So if you don't
10 mind returning that to Ms. Bevel, and she'll make
11 copies and attach it to the clerk's minutes or
12 something like that, if you have it.

13 MR. BECK: I think we probably should.

14 MR. BENJAMIN: At this point in time, I
15 guess what I was going to propose is that we just
16 move to admit them through Acee and ask him about
17 the factual basis. I was going to mark it as an
18 exhibit, and we can redact them to your heart's
19 content. Does that make sense?

20 MR. BECK: I mean, sure. It doesn't
21 matter to me. We'll do it if you don't, and we're
22 not going to contest the admission.

23 MR. BENJAMIN: I don't have any objection
24 to -- before they get published, to redacting and
25 the order of dismissal.

1 MR. CASTELLANO: No.

2 THE COURT: You'll give those back.

3 MR. CASTELLANO: Yes, Your Honor.

4 (The following proceedings were held in
5 open court.)

6 THE COURT: All right, Mr. Benjamin.

7 MR. BENJAMIN: Your Honor, one
8 housekeeping issue on the exhibit.

9 THE COURT: All right.

10 BY MR. BENJAMIN:

11 Q. Special Agent Acee, before the break, I'd
12 asked you to refer to the flight to avoid
13 prosecution affidavit; correct?

14 A. Yes, sir.

15 Q. That was filed essentially in May of 2017?

16 A. Yes.

17 Q. In that, you referenced a specific number
18 of SNM individuals that went to Charlene
19 Parker-Johnson's house.

20 A. Members.

21 Q. Members, okay. And how many was that?

22 A. Two.

23 Q. And that was on -- actually, I apologize.
24 I referred to the wrong affidavit. If you'd like to
25 see the affidavit, let me know. But I should have

1 referred to the possession with intent to distribute
2 affidavit from March 14 of 2016; correct?

3 A. In that one I say three associates.

4 Q. Three associates. Would you like to refer
5 to that?

6 A. Sure. Thank you.

7 Q. Let me come back to that, Special Agent.
8 I apologize. It's not been a good day.

9 One last question on the March 17, 2015,
10 assault with a deadly weapon, is how it's charged,
11 on Jose Gomez by Joe Gallegos; correct?

12 A. Yes, sir.

13 Q. And that's the one that we played the 911
14 call in opening for; correct?

15 A. Yes.

16 Q. Was the ambulance called out for that?

17 MR. CASTELLANO: Objection, calls for
18 speculation.

19 MR. BENJAMIN: If he knows, Your Honor.

20 THE COURT: Ask him first if he knows.

21 BY MR. BENJAMIN:

22 Q. Do you know if an ambulance was called out
23 for that?

24 A. I don't know.

25 Q. Okay. Let me move to the February 27,

1 2016, event. That's what we've been referring to as
2 the Charlene Parker-Johnson house; correct?

3 A. Yes, sir.

4 Q. Okay. And just briefly, for orientation
5 purposes, essentially that's where the Government
6 has alleged that three individuals went over to
7 Charlene Parker-Johnson's house and assaulted Jose
8 Gomez; correct?

9 A. Yes.

10 Q. Now, you have talked to Brandy Rodriguez?

11 A. Yes.

12 Q. Shauna Gutierrez?

13 A. Yes.

14 Q. Santos Gonzalez?

15 A. Yes, kind of off the record.

16 Q. When I say -- let me rephrase that. Okay.
17 Kind of off the record. And then Paul Rivera;
18 correct?

19 A. Yes.

20 Q. And those four individuals have pled
21 guilty to assaulting Jose Gomez; correct?

22 A. In this case, yes.

23 Q. In this case. And you're correct.

24 MR. BENJAMIN: Your Honor, at this point
25 in time, I would move to admit, and I believe

1 without objection, the plea agreement from Brandy
2 Rodriguez which was marked DC-1; a plea agreement
3 for Santos Gonzalez which is DB-1; a plea agreement
4 for Shauna Gutierrez, which is BQ-1; and a plea
5 agreement for Paul Rivera, which is CO-1.

6 THE COURT: Any objections to those,
7 Mr. Castellano?

8 MR. CASTELLANO: No, sir.

9 THE COURT: Anybody else have any
10 objections?

11 Not hearing any, Defendants' Exhibits
12 DC-1, DB-1, BQ-1, and CO-1 are admitted into
13 evidence.

14 (Defendants' Exhibits DC-1, DB-1, BQ-1,
15 and CO-1 admitted.)

16 BY MR. BENJAMIN:

17 Q. And you're familiar with essentially all
18 four of those individuals; correct?

19 A. Yes.

20 Q. And they've all pled guilty to assaulting
21 Jose Gomez?

22 A. Yes.

23 Q. Now, none of their plea agreements
24 state -- actually, let me step back a second. A
25 plea agreement is an agreement between the United

1 States and the defendant when they enter a plea;
2 correct?

3 A. Yes, sir.

4 Q. And are you aware of what the sentencing
5 range is on all four of those plea agreements?

6 A. No.

7 Q. Would it help for you to refer to those
8 plea agreements?

9 A. If you'd like me to refer to them.

10 MR. BENJAMIN: May I approach, Your Honor?

11 THE COURT: You may.

12 A. Is there a particular place?

13 BY MR. BENJAMIN:

14 Q. On page 2 and page 3.

15 A. Okay. Thank you.

16 Q. And are you aware of what the sentencing
17 ranges are on all four of those plea agreements?

18 A. Yes.

19 Q. What is that?

20 A. For count 14, it was ten years. Count 15,
21 it was 20 years. Count 16 was 30 years. Up to.
22 I'm not saying that correctly. Up to those dates.

23 Q. Correct. Okay. And so they have --
24 essentially one reason to enter into a plea
25 agreement is to limit your exposure, though;

1 correct?

2 A. I guess so.

3 Q. Each of those plea agreements also
4 contains a portion that's described as what's called
5 a factual basis; is that correct?

6 A. Yes.

7 Q. And the factual basis is what the
8 defendant has agreed their actions consisted of.

9 A. Yes.

10 Q. And are you familiar with the factual
11 basis in those plea agreements?

12 A. No, sir. In general, but not
13 specifically.

14 Q. In general. And let me see if you can
15 answer my question without having to refer to those.
16 All of those factual bases refer to actions that
17 that particular individual did on February 27, 2016;
18 correct?

19 A. Yes, in relation to the crimes charged,
20 yes.

21 Q. Correct. None of those factual bases say,
22 "I received a directive from Joe Lawrence Gallegos"?

23 A. I don't believe they specifically say
24 that.

25 Q. Okay. None of those factual bases say how

1 a directive, if any, was received; correct?

2 A. I'm not sure.

3 Q. Okay. Would you like to refer to those
4 factual bases?

5 A. Yes. If you want me to answer that,
6 please.

7 MR. BENJAMIN: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MR. BENJAMIN:

10 Q. I think they start on approximately 6.

11 A. Thank you. Thank you.

12 MR. BENJAMIN: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MR. BENJAMIN:

15 Q. That would be a no; correct, Agent?

16 A. Could you repeat the question?

17 Q. Yes. Sorry. None of those factual bases
18 say how a directive was sent, if at all, from Joe
19 Lawrence Gallegos; correct?

20 A. Not in those words, no.

21 Q. Not in any words.

22 A. Well, it says, "I conspired with others,"
23 so...

24 Q. Correct. But that's a legal definition to
25 support a factual basis. That's not "I received" --

1 there is no direction referred to in those plea
2 agreements.

3 A. Not the way you've said it, no.

4 Q. Brandy Rodriguez is one of those
5 individuals who pled guilty; correct?

6 A. Yes, sir.

7 Q. And she had said, when you spoke to her,
8 that Joe Gallegos had nothing to do with the hit;
9 correct?

10 MR. CASTELLANO: Objection, hearsay, Your
11 Honor.

12 MR. BENJAMIN: Co-conspirator statement.
13 She's pled and she's been convicted in a conspiracy.

14 MR. CASTELLANO: That's a statement to law
15 enforcement. That's not a co-conspirator statement.

16 THE COURT: Yeah, sustained.

17 MR. BENJAMIN: May I have a minute, Your
18 Honor?

19 THE COURT: You may.

20 BY MR. BENJAMIN:

21 Q. Did you interview Brandy Rodriguez on
22 September 16 of 2016?

23 A. Yes.

24 Q. And on that date, did she say whether or
25 not Joe Gallegos --

1 THE COURT: Hold on.

2 MR. CASTELLANO: Objection.

3 THE COURT: Yeah. I just think these are
4 being offered for the truth of the matter,
5 out-of-court statements, so sustained.

6 MR. BENJAMIN: Your Honor, I would move to
7 admit order dismissing criminal complaint without
8 prejudice, BO-1, I believe without objection.

9 THE COURT: Any objection?

10 MR. CASTELLANO: No objection, Your Honor.

11 THE COURT: Any objection from any other
12 defendant?

13 Not seeing or hearing any, Defendants'
14 Exhibit BO-1 will be admitted into evidence.

15 (Defendants' Exhibit BO-1 admitted.)

16 BY MR. BENJAMIN:

17 Q. Let me backtrack a little bit, Agent. You
18 drafted -- I don't think it's fair to say "filed,"
19 but correct me if you want to use a different
20 term -- you drafted a criminal complaint against
21 Jose Gomez for possession with intent to distribute;
22 correct?

23 A. Yes.

24 Q. And that was in March of 2016?

25 A. I think it might have been drug

1 conspiracy, but yes.

2 Q. Okay. It was a drug trafficking or drug
3 conspiracy offense?

4 A. Yes, sir.

5 Q. The Government has dismissed that
6 complaint or that case; correct?

7 A. Yes.

8 Q. Okay. You interviewed the owner of the
9 house, Charlene Parker-Johnson, in May of 2016,
10 didn't you?

11 A. Yes.

12 Q. Okay. And she described what she
13 understood was happening in the house that day,
14 correct, without going into the contents?

15 A. Yes.

16 Q. She also provided what she believed was
17 the basis of the assault; correct?

18 A. Like why it happened?

19 Q. Yes.

20 A. I'd have to look at my report.

21 MR. BENJAMIN: May I approach, Your Honor?

22 THE COURT: You may.

23 A. She did.

24 BY MR. BENJAMIN:

25 Q. And that had nothing to do with the SNM;

1 correct?

2 MR. CASTELLANO: Objection, calls for
3 hearsay.

4 THE COURT: Sustained.

5 MR. BENJAMIN: Your Honor, I would suggest
6 that I'm not seeking admission of the statement.
7 I'm seeking the impeachment of essentially the
8 investigator or the investigative techniques. It's
9 not being offered to the truth; it's being offered
10 for the absence of the truth.

11 THE COURT: I'm just not seeing
12 impeachment, so I don't think it should come in at
13 all.

14 MR. BENJAMIN: Moving on, Your Honor. I
15 understand. If I could have a minute, Your Honor,
16 I'm trying to wrap up.

17 THE COURT: You may.

18 BY MR. BENJAMIN:

19 Q. Agent, did you participate in an interview
20 of a controlled human source, a CHS, on August 5th
21 of 2015?

22 A. You have to be more specific. I've got
23 about 40 of them.

24 Q. And I can understand that. One of the
25 allegations against Joe Gallegos is that he murdered

1 Adrian Burns; correct?

2 A. Yes.

3 Q. And originally, the Government had
4 provided information that there was a wire and that
5 Joe Gallegos had admitted the murder on the wire;
6 correct?

7 A. I think I know what you're referring to,
8 and I now know what document you're referring to.

9 Q. And that statement originated August 5th
10 of 2015; correct?

11 A. Yes.

12 MR. CASTELLANO: Your Honor, I'll go ahead
13 and note my objection to hearsay now. He's going to
14 ask a question about what someone else said to Agent
15 Acee.

16 THE COURT: If you're going to do that,
17 you need to be careful.

18 MR. BENJAMIN: My next question, Your
19 Honor, is going to be: On September 15 of 2016, did
20 you retract that statement that was originally
21 provided by that CHS?

22 A. I noticed what I thought was a mistake in
23 a report. I conducted an interview to follow-up on
24 my thought. I determined that there was a mistake,
25 and I wrote a report pointing out that there was a

1 mistake.

2 BY MR. BENJAMIN:

3 Q. That was after that statement was being
4 challenged in this case; correct?

5 A. Perhaps. I try to listen closely to the
6 things you guys bring up, and if I think there is a
7 mistake somewhere, I try to ferret it out.

8 Q. Okay. And you had essentially said that
9 either the CHS misspoke or you misquoted the
10 individual; correct?

11 A. Yes. I believe the person that either I
12 or the CHS were talking about had the same last name
13 but a different first name. So I took
14 responsibility that I may have made a mistake in the
15 first names, or perhaps the CHS did. I didn't know,
16 so I just wanted to say one of us made a mistake.

17 Q. Understood. But that was a mistake
18 regarding something that was pivotal in a murder --
19 an alleged murder or murder conspiracy; correct?

20 A. No, sir.

21 Q. An admission by an individual is not
22 pivotal?

23 A. It could be. With respect, I disagree
24 that's the only place that shows up, and that's why
25 I don't think it was pivotal. I think it was just a

1 mistake on my part or that source's part that we
2 corrected.

3 Q. So we have to disagree on that, I guess.

4 A. I guess.

5 Q. Okay. Speaking of Adrian Burns, in
6 April -- on April 13 of 2016, you participated in a
7 search of Joe Gallegos' house at 4 Erin Court?

8 A. Yes, sir.

9 Q. And I think that's Los Chavez, but I'm not
10 sure what the mailing address would be. But Los
11 Chavez or Los Lunas; correct?

12 A. Yes.

13 Q. And one of the purposes of that search
14 that was executed on the search warrant was to
15 secure more evidence for the prosecution of this
16 case; correct?

17 A. Yes, sir.

18 Q. Okay. And that search warrant allowed you
19 to enter the house?

20 A. Yes.

21 Q. Sorry. I guess I'll make them a little
22 more complete thought. Enter the house and at the
23 direction of an individual who believed some things,
24 you took flooring samples and samples of furniture
25 and samples of the wall.

1 A. We cut out sections of the floor and
2 sections of the wall. I don't remember if we took
3 any furniture. We may have.

4 Q. A leg of a table?

5 A. I was looking for a table leg. I don't
6 think we found it, though.

7 Q. And the Government essentially had access
8 to the entire house when it conducted that search;
9 correct?

10 A. Yes.

11 Q. At this point in time, Joe Gallegos was in
12 custody on this case?

13 A. Yes, sir.

14 Q. And there was nobody else living at that
15 house at that time.

16 A. No, I think Shauna's son was staying
17 there. I've been to the house a number of times and
18 I've counted him there twice. I think he was on the
19 couch.

20 Q. Okay. But you had complete access to the
21 house?

22 A. Yes, sir.

23 Q. And you had an individual tell you, "This
24 is what I did and I saw"; correct?

25 A. Oh, I think I know what you're referring

1 to.

2 Q. You were searching for blood and DNA
3 evidence; correct?

4 A. Yes.

5 Q. And that's where you were taking specific
6 cuts of the floor and the walls.

7 A. Yes.

8 Q. And those cuts were at your direction, at
9 your or other agents' direction based upon your
10 training and experience?

11 A. Not mine, but more specifically the search
12 team leader, after sprinkling substances around to
13 pick up traces of blood.

14 Q. Essentially it's a dye that reacts to the
15 presence of essentially -- I don't think you or I
16 know, but the stuff that's in blood?

17 A. Yes, sir. That's why I wasn't in charge
18 of what was taken.

19 Q. And then there were also items that were
20 pointed that should be searched, or areas that were
21 pointed out that were consistent with what that
22 individual understood happened; correct? Or
23 believed happened?

24 A. I had some collaboration with the witness,
25 but I'm not sure what you're getting at. I cannot

1 answer that.

2 Q. That witness' name is Jason Van Veghel?

3 A. Yes, sir.

4 Q. And he provided you essentially a story;
5 right? I mean, he told you what he believed.

6 A. What he witnessed and participated in.

7 Q. Okay. And he was telling you what, when,
8 where, and how, along the lines of that
9 participation in his story; correct?

10 A. Yes.

11 Q. Which rooms?

12 A. Yes.

13 Q. And so he supposedly had personal
14 knowledge of where these things would be and where
15 this information was going to come from?

16 A. Limited to what he saw, yes.

17 Q. And based upon his perception at the time
18 and those kinds of things, because he was high on
19 heroin; correct?

20 A. Well, he received some heroin. I don't
21 know if he used it yet. But he was a heroin and a
22 methamphetamine addict.

23 Q. Okay.

24 A. I just don't know if he was high at that
25 time.

1 Q. Okay. In your experience, when drug
2 addicts get drugs, what do they usually do with them
3 right away?

4 A. With heroin, they use it.

5 Q. And so to some extent, he was directing
6 where -- in addition to anybody else's thoughts,
7 where you should be concentrating your search;
8 correct?

9 A. No, sir. I mean, the FBI agents were in
10 charge of the search and the grounds. And there was
11 a lot of stuff to search, but it is true, I had
12 Jason there at the scene, and I would walk outside
13 the house and I'd press him for more information to
14 speed the process up and make sure we were focused.

15 Q. Okay. And without getting into the
16 results, nothing substantive came of that search of
17 that house; correct?

18 MR. CASTELLANO: Objection. Calls for
19 hearsay.

20 THE COURT: Overruled.

21 A. Well, I disagree with you.

22 BY MR. BENJAMIN:

23 Q. There was no direct evidence that came
24 from -- based upon the search of that house?

25 A. You're talking about blood and DNA? No.

1 But there was other evidence that we seized that I
2 think is important.

3 Q. Okay. And Jason also told that you there
4 was some keys and a watch that were disposed of;
5 correct?

6 MR. CASTELLANO: Objection. Calls for
7 hearsay.

8 THE COURT: Sustained.

9 BY MR. BENJAMIN:

10 Q. Did you search for keys and a watch, based
11 upon what you were told?

12 A. Not during that search warrant, but
13 subsequently, yes.

14 Q. A couple days later?

15 A. Yes.

16 Q. Did you find those?

17 A. No.

18 Q. And how many people participated in that
19 search? You're smiling.

20 A. It was a lot. I took the FBI's evidence
21 response team, which is -- I don't know if in my 302
22 I say how many people. That's the reason I'm
23 hesitating. But it was a lot of people. And then
24 at the time, the New Mexico Corrections Department
25 had an academy going with cadets, or whatever you

1 call them, and we brought all them, as well, because
2 we had to search a couple open fields and we had to
3 pull away the brush and move the dirt around. So
4 there was probably at least 50 people.

5 Q. A significant number. I mean, we'll agree
6 on that?

7 A. That's a lot for a search, yes.

8 MR. BENJAMIN: May I have one second to
9 consult with counsel, Your Honor?

10 THE COURT: You may.

11 BY MR. BENJAMIN:

12 Q. Agent Acee, I think I asked you -- you
13 took notes on September 16, 2016; correct?

14 A. Was that the search warrant? Which
15 incident was that?

16 Q. That was the interview of Brandy
17 Rodriguez.

18 A. Oh, yes.

19 Q. And those are your notes, because you were
20 the one that interviewed her; correct?

21 A. I'd need to look at the notes. I
22 sometimes have newer agents with me, and I'll have
23 them take notes to get practice in it.

24 MR. BENJAMIN: May I approach, Your Honor?

25 THE COURT: You may.

1 A. That doesn't look like my writing, no.
2 No, these aren't my notes.

3 MR. BENJAMIN: I understood they were
4 Special Agent Acee's notes.
5 BY MR. BENJAMIN:

6 Q. Is that your writing?

7 A. No. I usually use block letters. So
8 that's the first thing I noticed. That looks like
9 maybe Thomas Neale's notes. Another agent.

10 MR. BENJAMIN: I appreciate it. Pass the
11 witness, Your Honor.

12 THE COURT: Thank you, Mr. Benjamin.

13 Mr. Blackburn, do you have
14 cross-examination of Mr. Acee?

15 MR. BENJAMIN: Your Honor, may I approach
16 the clerk?

17 THE COURT: You may.

18 CROSS-EXAMINATION

19 BY MR. BLACKBURN:

20 Q. Good afternoon, Agent Acee.

21 A. Good afternoon, sir.

22 Q. I want to ask you just a few questions
23 about plea agreements and cooperation agreements.
24 There has been a lot of discussion about cooperation
25 agreements and plea agreements, but you're aware

1 that at least a lot of the cooperators in this case
2 have entered into plea agreements; is that correct?

3 A. Yes, sir.

4 Q. And in those plea agreements there's
5 issues that call for an individual to receive a
6 5K1.1 if it is -- if a motion is filed by the
7 Government; is that correct?

8 A. Yes, sir.

9 Q. So when we talk about -- when we talk
10 about discovery on some issues, we talk about a 5K1,
11 it's an agreement that if, indeed, the person
12 cooperates and provides substantial assistance to
13 the Government in the prosecution of another, that
14 the Government will agree to provide a motion to the
15 Court; that is correct?

16 A. I think so.

17 Q. And based upon that motion, the Court will
18 then have the opportunity to review the Government's
19 decision as to that person's participation and to
20 reduce the sentence that the person could get; is
21 that correct?

22 A. Yes.

23 Q. All right. So a lot of that depends upon
24 one, what the Government puts in their motion; is
25 that correct?

1 A. I think so.

2 Q. Some people may cooperate by just
3 providing assistance other than testifying, and some
4 people may provide a substantial assistance by
5 testifying on four, five, six, or seven occasions;
6 is that correct?

7 A. Yes.

8 Q. And then based upon -- first of all, it's
9 the Government who has to file that particular
10 motion in order for that person to get a reduced
11 sentence; is that right?

12 A. Yes. It starts with the Government.

13 Q. And so when we're going to hear from some
14 of these cooperators over the next seven weeks,
15 there will be -- they will be talking about a 5K or
16 a reduction in their sentence because of their
17 cooperation; is that correct?

18 A. Yes.

19 Q. And when you meet with these cooperators
20 in the beginning, whether it was just the initial
21 debrief or not maybe not necessarily the first
22 interview or the second interview, you let them know
23 the more they cooperate or the more information they
24 give you or if they're willing to testify, that will
25 affect a reduction in sentence, depending upon what

1 the judge and the Court does; right?

2 A. Those conversations happened, sir. I
3 don't speak to that. I let the attorneys do --

4 Q. You let the attorneys do that; right?

5 A. Yes, sir.

6 Q. So a lot of the times that you, let's say,
7 take interviews or what we call debrief some of
8 these gentlemen or ladies, a lot of the times you do
9 those with just yourself and another agent; correct?

10 A. Sometimes it's just me and another agent,
11 yes.

12 Q. Sometimes it's you and another agent and a
13 defense attorney or an attorney for the person who
14 is going to cooperate; is that correct?

15 A. Yes.

16 Q. And a lot of times it's you, another
17 agent, and members of the prosecution team with that
18 individual and/or the individual and its agent; is
19 that correct?

20 A. Yes.

21 Q. So we have a series of who is in there
22 doing these interviews. Sometimes you and sometimes
23 the Government comes along as it relates to these
24 interviews; is that correct?

25 A. Yes.

1 Q. And in particular, when there's going to
2 be some type of trial or something coming up, it's
3 not unusual for you and/or the Government together
4 to interview these individuals just shortly before
5 trial to make sure that they're prepared for what's
6 going to happen; is that correct?

7 A. Yes.

8 Q. Now, so you're aware that you have heard
9 of some of the conversations that some of the
10 cooperators have had, jail calls with their
11 families; right?

12 A. Yes.

13 Q. I want to talk about what they're saying.
14 But when they're talking to their loved ones or
15 other individuals about a reduction in sentence or
16 what they may be looking at, that's what they're
17 talking about; is that correct? If you know.

18 A. From the ones I've heard, they have
19 represented to their families -- I think this is
20 what you're asking me --

21 Q. Sure.

22 A. -- that they're hopeful of getting a
23 reduction in sentence.

24 Q. Some of them may be hoping to come home to
25 plant the grass in the spring or some of them to

1 shovel the snow in the winter; right?

2 A. Sure.

3 Q. All right. Now, have you, in your career,
4 ever drafted up letters or provided anything for an
5 individual, a cooperator, a letter or something to
6 that extent to provide to the Government to give to
7 the judge to talk about somebody's cooperation?

8 A. I'm hesitating to say no, but nothing is
9 jumping out at me. I may have, over the last 20
10 years or so.

11 Q. All right. And at any point in time, have
12 you ever appeared in a cooperator's sentencing to
13 be -- if the judge needs to talk to you or your
14 agency about somebody's cooperation in that
15 particular case?

16 A. I can think of one instance, yes.

17 Q. All right. Yesterday, when we were
18 looking at a series of pictures concerning some of
19 the individuals in this case, you mentioned that
20 there was not a photograph of Arturo Garcia, my
21 client; is that correct?

22 A. Yes, sir.

23 Q. And a lot of the photographs we looked at
24 were of December 3 of 2015, when one of the first
25 takedowns -- what I would call takedowns occurred;

1 correct?

2 A. Yes.

3 Q. And you indicated that under the
4 circumstances, there was not one of Mr. Arturo
5 Garcia because he was not present in New Mexico; is
6 that correct?

7 A. Yes.

8 Q. And eventually you didn't get a picture of
9 him because the warrant ran out and the time
10 expired; is that correct?

11 A. Yes.

12 Q. Now, you know eventually, though, that he
13 was arrested in Denver, Colorado; is that correct?

14 A. Yes, sir.

15 Q. And you also know that he had been out for
16 some 16, 18 months out of the prison system; is that
17 correct?

18 A. Yes, sir.

19 Q. And he had been on the streets in maybe
20 Tucson and in Denver, but he was no longer
21 incarcerated; is that correct?

22 A. Correct.

23 Q. All right. And you also know that as it
24 relates to the 2007 murder that occurred and that
25 he's charged with in this case of Freddie Sanchez,

1 that that murder occurred in Las Cruces, New Mexico,
2 at the penitentiary in Las Cruces; is that right?

3 A. Yes.

4 Q. And you know at the time of that
5 particular murder that Mr. Arturo Garcia was being
6 housed in one of the facilities in Santa Fe, in the
7 North Facility at PNM; is that correct?

8 A. Yes.

9 Q. You talked a little bit this morning and
10 this afternoon with Mr. Castle concerning some of
11 the cooperators, and one of those was Gerald
12 Archuleta; correct?

13 A. Yes.

14 Q. And Gerald Archuleta was what you would
15 call a shot-caller; is that true?

16 A. Yes.

17 Q. So he had some stature in the SNM Gang; is
18 that correct?

19 A. Yes.

20 Q. And you said that you were working on --
21 as I recall, the words were something like you were
22 working on drafting up an indictment or charges
23 against him doing overt acts to arrest him and
24 charge him with a series of crimes; is that correct?

25 A. I personally was working on his overt acts

1 for a RICO conspiracy charge.

2 Q. And he would have been charged with the
3 gentlemen in this particular case; is that right?

4 A. Yes.

5 Q. But before that happened, he agreed to
6 cooperate; is that correct?

7 A. Yes.

8 Q. As he was leaving Tennessee -- I think --
9 was it Tennessee?

10 A. Yes.

11 Q. Okay. So he was aware or at least he made
12 contact with you or you made contact with him, and
13 he worked out an agreement with you at that time; is
14 that correct?

15 A. Did you say wrote down? I'm sorry.

16 Q. I said you arrested him or you came across
17 him under some circumstances, and he agreed to
18 cooperate; is that right?

19 A. Yes.

20 Q. And when he cooperated, all of those overt
21 acts that you were working on, or those issues that
22 related to those crimes, sort of went away, did they
23 not?

24 A. No.

25 Q. They didn't go away?

1 A. Not until I saw results.

2 Q. Not until you saw results. But when you
3 saw results, all of those things that you had been
4 working on went away?

5 A. Yes.

6 Q. And he performed?

7 A. Yes.

8 Q. And he's testified. Or he will testify;
9 correct?

10 A. He has and he will.

11 Q. And he was eventually charged, was he not?

12 A. In a similar case.

13 Q. In the 4268 case; right? He was charged
14 in the VICAR case; right?

15 A. He was.

16 Q. But whereas a lot of the individuals were
17 charged with a murder in 2000 and 2007 and 2012 and
18 those, he was only charged with an assault; right?

19 A. Not even. I think an attempt.

20 Q. An attempt to do an assault as it relates
21 to Julian Romero; is that correct?

22 A. Yes.

23 Q. And the statutory time that he was looking
24 at that we've talked about, Mr. Castle talked about
25 this morning, was only a three-year sentence; is

1 that right?

2 A. That's the maximum.

3 Q. That's the maximum. So all of that sort
4 of got washed away, not through a 5K1 letter, but by
5 him cooperating with you in the beginning and giving
6 you results, that you sort of changed the charges to
7 make sure that the most that he was going to get
8 would be a maximum of three years.

9 A. I agree with most of that. I'll say I
10 didn't change anything. I just stopped working on
11 the RICO conspiracy.

12 Q. Because he was going to help you.

13 A. Yes.

14 Q. All right. He still continued to receive
15 payments, did he not?

16 A. At what point, sir?

17 Q. From the time that he started to
18 cooperate.

19 A. He did receive payments, yes.

20 Q. So I mean, he got a substantial break or
21 reduction because you stopped working on all of the
22 RICO acts; there were going to be quite a few RICO
23 acts; right?

24 A. There were going to be quite a few.

25 Q. We're going to get to hear them, probably;

1 right?

2 A. I'm not sure.

3 Q. Somebody is going to ask him questions
4 about that, I would assume, if he shows up and
5 testifies.

6 A. Now that you've said that, I would
7 probably expect to see that.

8 Q. You'd expect to see that? Probably
9 Mr. Castle will ask at least a few questions; right?

10 A. Probably more than that.

11 Q. Okay. And he continued to receive
12 benefits, monetary benefits, but also as it relates
13 to other benefits like extra time, visits with
14 family; the other things that we've talked about
15 today; is that correct?

16 A. Yes. His family was all out of state
17 except for, I believe, his father, and he did at one
18 point get to see his dad.

19 Q. All right. Now, the 2007 murder as it
20 relates to Freddie Sanchez, that my client and
21 others are charged with in count 3, Mr. Troup. That
22 case was never prosecuted in state court, was it?

23 A. No.

24 Q. And the state jurisdiction would have come
25 from the Dona Ana County District Attorney's Office

1 or Dona Ana County courts; is that correct?

2 A. Yes, sir.

3 Q. But that case was submitted to them, but
4 there was never any prosecution; is that correct?

5 A. The second half of that is correct. I
6 don't know if it was ever submitted to the district
7 attorney's office, but there was no state
8 prosecution.

9 Q. This morning you were talking to
10 Mr. Castle about your -- sort of your little outline
11 that you would take with you when you were doing the
12 interviews, the 200 questions that you would use to
13 assist you in doing the interviews of some of the
14 cooperators; is that correct?

15 A. Yes.

16 Q. And that was sort of your guide to direct
17 you to make sure you asked those questions, as many
18 of them as you could, depending on the time that you
19 had with those individuals; correct?

20 A. Yes, sir. That's all correct. It was
21 more so for some of the agents helping me that maybe
22 weren't as familiar with the background.

23 Q. And one of the things that Mr. Castle
24 showed you was a little paragraph as it related to
25 the Garza and Castillo murders, the ones in 2000,

1 about: These are the people who were involved;
2 correct? We looked at that little paragraph. I
3 forgot what number it was.

4 A. There were four questions he highlighted,
5 yes.

6 Q. And the same is true for those individuals
7 that you interviewed as it related to the 2007
8 murders of Freddie Sanchez. There was something
9 that was similar to that that was asked of those
10 cooperators also, wasn't it?

11 A. Yes.

12 Q. So let me talk to you, lastly, about
13 tablets. When you do an interview that we just
14 talked about, when you were interviewing the
15 cooperators, you put your -- or somebody writes a
16 report concerning that particular interview; is that
17 correct?

18 A. Yes.

19 Q. Whether you're conducting the interview or
20 whether you're with the Government prosecutors,
21 somebody writes a 302 that relates to what the
22 cooperator said during that particular interview; is
23 that correct?

24 A. Yes.

25 Q. And you're aware that all of the -- and

1 you provide those to the Government, and the
2 Government provides them to us as part of what we
3 call discovery; right?

4 A. Yes.

5 Q. All right. And those documents are --
6 based upon the arrangements we had in this case,
7 those documents are downloaded onto the tablets that
8 belong to the defendants; is that correct?

9 A. Yes.

10 MR. BLACKBURN: Does somebody have one?

11 Q. And you've seen the tablets, have you not?

12 A. Yes.

13 Q. And I don't want to introduce this into
14 evidence, but this is what we're talking about, the
15 tablets that all of these gentlemen have in order to
16 be able to review their discovery; is that correct?

17 A. Yes.

18 Q. Now, that tablet, as you know, has all of
19 the discovery that has been provided by the
20 Government and the 302s concerning the cooperators
21 as it relates to the murders in 2000; is that right?

22 A. Yes, the March 2001 murders.

23 Q. And the June 2007 murders; right?

24 A. Yes.

25 Q. And all of the information that relates to

1 the Gallegos defendants that are on trial as it
2 relates to those particular counts, Adrian Burns
3 issues; right?

4 A. Yes, sir. To be clear, everything we
5 write on this case, we turn over.

6 Q. You turn over and it goes onto those
7 tablets.

8 A. Yes, sir.

9 Q. And for instance, as it relates to the
10 2007 matters, there would be information on that
11 tablet that relates to Ruben Hernandez; is that
12 correct?

13 A. Yes.

14 Q. Because Ruben Hernandez agreed to
15 cooperate with you, and you interviewed him, and his
16 statements are on there, are they not?

17 A. Yes.

18 Q. And there would be statements on there
19 that relate to Benjamin Clark, would there not?

20 A. Yes.

21 Q. As to the interviews you did with him;
22 correct?

23 A. Yes.

24 Q. And also a few other things concerning
25 302s as to when he was sort of a bad boy; right?

1 A. Yes.

2 Q. When he did things he wasn't supposed to
3 do, and you confronted him with those, and you took
4 him off being a cooperator. Well, you took him off
5 being an informant; correct?

6 A. Yes, sir.

7 Q. He's still going to cooperate, but he's no
8 longer receiving benefits that he would have
9 received; is that correct?

10 A. Yes, sir.

11 Q. So anything concerning when -- things that
12 you find out, the Government finds out, whether it's
13 through reports as it relates to a particular case;
14 for instance -- let me back up. For instance, you
15 know that in all of these, in particular, like the
16 2007 murder in Las Cruces, as it relates to Freddie
17 Sanchez, there are reports and photographs -- I
18 think we saw some on the screen -- where somebody
19 was found in the cell; right?

20 A. Yes, sir.

21 Q. Reports done by the State Police who
22 investigated the crime; correct?

23 A. Yes, sir. Everything I can get my hands
24 on, we turn over.

25 Q. Everything that you can imagine, because

1 we're in here complaining all the time about we
2 need -- we're like R2-D2. We need more information,
3 we need more information. And you try and provide
4 that to us so we can get all this information and we
5 put it on the tablets so we can defend these guys;
6 right?

7 A. Yes, sir.

8 Q. And for instance, Javier Alonso, issues
9 with Javier Alonso, as to his cooperating statements
10 and the time that he debriefed with you -- all of
11 those are on there; correct?

12 A. Yes.

13 Q. And all of these -- and so, for instance,
14 all of the issues that relate to Mario Rodriguez.
15 All of the reports that relate to crimes he may have
16 committed and his debriefings he did with you is on
17 there also; right?

18 A. Yes.

19 Q. And his co-defendant, Mr. Martinez.
20 Everything that relates to Mr. Martinez is on there;
21 right?

22 A. Yes.

23 Q. So all of these people who were
24 cooperating -- they have access to every report that
25 you have given to us, do they not?

1 A. No.

2 Q. It's not on those tablets?

3 A. It is. It's just that not all of them
4 have their tablets anymore.

5 Q. Oh, okay.

6 A. At one time, yes.

7 Q. At one time, before some of them got in a
8 little bit of trouble by using the Walmart and the
9 McDonald's free Wi-Fi as a hot spot; right?

10 A. Yes.

11 Q. And all of those individuals lost their --
12 all of them lost their tablets for a while, but they
13 got them back, did they not?

14 A. I'm under the impression that anyone that
15 had their tablet taken away for misuse has not
16 gotten it back.

17 Q. Well, Jerry Montoya had his tablet --
18 Jerry Montoya was one of the individuals that was
19 involved in this McDonald's issue and the Walmart --
20 but all these gentlemen still have their tablet,
21 except for Jerry Armenta; is that correct?

22 A. No, sir, I don't believe that's correct.

23 Q. You're sure?

24 A. I'm not, because I don't deal with the
25 tablets.

1 Q. Okay. All right. Well, when these guys
2 come in here, we'll be able to talk to them about,
3 for instance, somebody like Mario Rodriguez. Did
4 you receive the latest discovery within the last
5 couple of weeks? And we'll be able to ask these
6 individuals when they testify about their individual
7 tablets; right?

8 A. Yes, sir. And I can speak on Mario. I
9 believe Mario Rodriguez does have his, because he
10 didn't compromise it.

11 Q. He didn't compromise?

12 A. So he still has his.

13 Q. When we're talking about the people that
14 wouldn't have them, who were the four who wouldn't
15 have them?

16 A. I thought there was more than four, but I
17 don't think Jerry Armenta, Benjamin Clark, Gerald
18 Archuleta --

19 Q. And Jerry Montoya?

20 A. I don't know that his was compromised, off
21 the top of my head. Paul Rivera. I seem to think
22 the Court order had eight names on there. I just
23 can't remember all of them.

24 Q. Javier Alonso and Ruben Hernandez weren't
25 involved in that, were they?

1 A. No, I think they were at different
2 facilities.

3 Q. So they have their tablets?

4 A. As far as I know.

5 Q. And so I guess the point is -- and a lot
6 of these cooperators are in the same facility, are
7 they not?

8 A. There's groups of them, and then there are
9 some that are at other facilities.

10 Q. So not only are they together at different
11 facilities, but they have the opportunity to see
12 what everybody else has said and to be able to track
13 your investigation in this case, can they not?

14 A. The ones that have tablets still,
15 certainly.

16 Q. Now, as relates to Jerry Armenta, I think
17 you were talking about him this morning. He lost
18 his privileges also because he rented out his
19 tablet, did he not?

20 A. I heard him say that when he was on the
21 witness stand.

22 Q. And he said he rented them out for what?
23 For drugs; right?

24 A. I don't remember that part, but he may
25 have said that.

1 Q. He's renting his tablet out to somebody
2 else -- he rented it out to somebody to use when he
3 was able to have access to the internet, did he not?

4 A. Yes, I remember him saying that he allowed
5 other people to use his tablet to get on the
6 internet.

7 MR. BLACKBURN: May I have a second, Your
8 Honor?

9 THE COURT: You may.

10 MR. BLACKBURN: I don't think I have any
11 other questions.

12 THE COURT: Thank you, Mr. Blackburn.

13 Does anyone else have cross-examination of
14 Mr. Acee?

15 MR. SOLIS: I think I have some.

16 THE COURT: Mr. Solis?

17 MR. SOLIS: Thank you, Your Honor.

18 THE COURT: Mr. Solis.

19 CROSS-EXAMINATION

20 BY MR. SOLIS:

21 Q. Mr. Acee, how are you, sir?

22 A. Good. Thank you.

23 Q. Are you holding up okay?

24 A. Yes, sir.

25 Q. All right. So before I lose my train of

1 thought, there was a series of questions I wanted to
2 ask you, but Mr. Castle and Mr. Blackburn kind of
3 prefaced what I want to follow up now, and I'll do
4 that now out of order in the way I wanted to present
5 my questions to you before it escapes my memory.

6 So with regard to the -- well, you've been
7 an agent for how long now, sir?

8 A. About nine and a half years.

9 Q. Nine and a half years. And so as an FBI
10 agent, you've seen your fair share of what we call
11 the Kastigar letter, the 5K1 scenario we've talked
12 about today?

13 A. Yes.

14 Q. And although you've indicated you're not
15 intimately familiar with the details, you have a
16 general understanding of how it works; right?

17 A. Certainly.

18 Q. And we talked about the 5K1. Just so the
19 jury understands, that's a section in the sentencing
20 guidelines which is, in essence, the bible of
21 sentencing for federal courts; correct?

22 A. Yes, sir.

23 Q. And that section is where the Court is
24 authorized to reduce a sentence for a defendant when
25 the Government, at its sole discretion, allows the

1 Court to do that. Does that pretty much sum it up?

2 A. Yes, sir.

3 Q. So the Kastigar letter and the scenario
4 with the 5K1 occurs when there's cooperators like
5 we've discussed ad infinitum today?

6 A. Yes.

7 Q. And isn't it true, sir, that the Kastigar
8 letter, the 5K1 scenario, requires full cooperation
9 to avail yourself, if you're that cooperator, of the
10 benefits we've just talked about; is that true?

11 A. I think so. And I only hesitate because
12 it's a lengthy section. You know it better than I
13 do, and I just don't want to overspeak my knowledge,
14 but I also want to answer your questions honestly.

15 Q. Again, although you're not instantly
16 familiar with the letter or the process, you are
17 familiar enough after nine and a half years to speak
18 to whether or not there is full cooperation required
19 to get a benefit or obtain a benefit if you're that
20 cooperator or defendant; is that right?

21 A. That sounds right.

22 Q. Okay. So when Mr. Castle asked you
23 earlier today about the cash paid to the
24 cooperators -- by the way, just total, you being the
25 case agent, I know you know, what's the total amount

1 that's been paid to these cooperators, just total?

2 A ballpark figure is fine.

3 A. Relocation and everything, all dollars
4 spent?

5 Q. Yeah. Ballpark is fine.

6 A. I tend to get pinned down on my numbers,
7 so I like to take a little time to make sure I'm
8 pretty close. Maybe around \$80,000 or \$90,000.

9 Q. All right. So -- and of course, the
10 answer to the question posed by Mr. Castle about
11 incentives, benefits, considerations, cash, I think
12 is a phrase he used. You were quick to point out,
13 "But it's not for testimony." But isn't it true
14 that if you require full cooperation, that does
15 require testimony, doesn't it, sir?

16 A. If the Government -- if the prosecutors
17 want and ask for them to testify, I believe they're
18 expected to. But there are some scenarios where
19 people will be truthful and provide information, but
20 they won't testify.

21 Q. And then there are other scenarios where
22 it is exactly required and it's expected, isn't it?

23 A. Yes, sir.

24 Q. So the answer to the question, is cash
25 offered for cooperators, the answer is yes,

1 including testimony.

2 A. I don't want to say that, because I can't
3 pay somebody to testify, and I can't offer to pay
4 them to testify.

5 Q. All right. You don't want to say it, but
6 you've certainly seen it happen.

7 A. I've seen people cooperate. I've seen
8 them receive benefits, such as relocation, and
9 they've provided testimony. But I have to be
10 careful. I mean, we have guidelines and rules. I
11 want to stay clear of that area. I can't pay
12 somebody for testimony, and I can't offer that.

13 Q. Right. But you've not disagreed with the
14 scenario as I've described it today.

15 A. I don't care for the way you're describing
16 it, but I understand what you're saying.

17 Q. Right. And that's exactly my point.

18 So now, I can go on to this vignette, so
19 let me say another point, and maybe you can help me
20 illustrate the point with your response to this
21 little preface that I've got.

22 So in 1998 I'm trying a capital murder
23 case. And bear with me here.

24 A. Sure.

25 Q. The crux of the matter in that particular

1 case was a defendant's statement/confession as a
2 result of an interrogation. And this is 1998, and
3 there was not a video, a recording, audio or
4 otherwise. There was essentially a statement
5 provided by my defendant at that time. And with the
6 Honorable Judge Guaderrama, who is now a federal
7 judge in the Western District of Texas. And there
8 was a fight about that statement. As you might
9 imagine, as a defense lawyer, and the prosecution,
10 there was a huge fight about whether that statement
11 was actually given voluntarily, whether Miranda
12 rights were administered prior. It was a huge
13 fight. Are you with me so far?

14 A. Yes.

15 Q. 2002, five years later. It's 2002 now.
16 As it happens -- I'm not making this up -- I'm in
17 Judge Guaderrama's court again. Another murder.
18 Not a capital; just a first-degree, plain vanilla
19 murder. So now there is another confession,
20 statement, attributed to a defendant. And in this
21 case, there was an actual recording of that
22 statement, video recording of that statement. Do
23 you think it was a fight about what the defendant
24 said in that particular case?

25 A. I wouldn't know.

1 Q. Sure you do.

2 A. I wasn't there, sir.

3 Q. I just described to you the scenario as I
4 painted it right now.

5 A. There is always a fight when we come to
6 court, isn't there?

7 Q. Okay. So in this scenario I've painted
8 where there was a second defendant where the
9 recording is on tape -- the statement is on tape,
10 rather; the admonishments are on tape, and the words
11 that come out of his mouth are on tape. What's your
12 response now when I ask you, do you think there was
13 a fight about that?

14 A. I think there is always a fight, but I
15 think that's better evidence.

16 Q. Okay. That's better evidence.

17 A. Yes.

18 Q. That's better evidence where the ladies
19 and gentlemen of the jury can see for themselves,
20 determine for themselves, and decide for themselves
21 whether, in fact, those are the words attributed to
22 that defendant; is that right?

23 A. Yes.

24 Q. In fact, that is your sentiment, isn't it,
25 sir?

1 Now, Mr. Castle explored with you at a
2 pretrial hearing connected to this trial about your
3 preference to have interviews recorded, and he
4 referenced a previous under oath statement where
5 you've said, "Well, if it's not recorded, the
6 conversation in my mind didn't happen."

7 Those are, in fact, your sentiments,
8 aren't they?

9 A. To informants deployed in the field, yes.
10 That's what that question was in relation to.

11 Q. Informants perhaps may be used as
12 cooperators, I think was the gist and the context of
13 that question posed by Mr. Castle referencing your
14 previous testimony in another pretrial hearing where
15 you said, "Well, if it's not recorded, the
16 conversation, in my mind, did not happen."

17 A. That's again in reference to me sending
18 informants into the prison to talk to other SNM
19 members. I wanted recordings.

20 Q. Sure. And I'll accept that. But
21 nonetheless, as a general proposition, you'd prefer
22 that.

23 A. It depends on the scenario. You're asking
24 me when I'm deploying an informant in a buy or
25 trying to obtain a confession from somebody, I want

1 a recording. If it wasn't recorded, it didn't
2 happen. That is what I was saying.

3 Q. What is the best evidence? I think you
4 addressed that just moments ago. What is the better
5 evidence?

6 A. Between a video confession and nothing? A
7 video confession.

8 Q. A video confession where someone says,
9 "John Doe told me this", or John Doe actually
10 recorded saying, "These are the things he said."

11 A little while ago you referenced it with
12 no problem. You said it was the better evidence.

13 A. Yes, in the scenario you gave me where a
14 person has been arrested and they give a post-arrest
15 statement, I believe that would be better evidence.

16 MR. SOLIS: A moment, Your Honor?

17 THE COURT: You may.

18 BY MR. SOLIS:

19 Q. I'll address with you, Agent Acee, the
20 topic of witnesses in general. I think at the
21 beginning you referenced with Mr. Castle -- or
22 discussed with Mr. Castle your prior experience and
23 your work with PD, I think, in LA, and I think in
24 Portland, as well?

25 A. Yes, sir.

1 Q. And then now with the Bureau. And you
2 talked about the various types of scenarios or
3 various types of personalities with regard to
4 witnesses and how you might have to be careful about
5 those type of witnesses or witnesses just in
6 general. Do you remember that discussion?

7 A. I remember talking about showing people
8 respect, and then I think I made the comment that I
9 may interview a witness differently than a
10 cooperating defendant who is a member of a prison
11 gang.

12 Q. That's true. And you know what? I mixed
13 that with your previous testimony at a previous
14 hearing that related to this trial, but that, too,
15 is relevant.

16 But the other part I have about your
17 previous testimony was that you're concerned about
18 the honesty of informants in response to
19 Mr. Castle's questions about how you'd -- your
20 preferences for recorded conversations and your
21 discussion then pivoted to the honesty of informants
22 and that's always a concern for you; is that right?

23 A. Yes.

24 Q. That is a yes?

25 A. Yes.

1 Q. All right. And I think it kind of
2 dovetails into the question or the inquiry with
3 regard to your preference for recorded statements,
4 audio or otherwise, because of that concern about
5 informants. Is that pretty much true?

6 A. Well, there are some -- that's not an easy
7 question to just answer with yes or no, because
8 there is a litany of scenarios there, and I'll just
9 pause there.

10 Q. Okay. Well, isn't it sometimes -- your
11 response before when Mr. Castle asked about the
12 honesty of the people you work with, the inmates,
13 you said, "Yeah, sometimes."

14 Can we at least have that today, that
15 sometimes that is a concern?

16 A. Oh, in terms of whether or not they're
17 honest? Informants?

18 Q. Sure.

19 A. Let me be clear. I mean, when I first
20 meet an informant, I don't have much trust for them.
21 That's something that's earned.

22 Q. Right. And so again, it dovetails into
23 why you prefer and you have a preference for a
24 recorded conversation, to where you were even
25 prompted to say that if it's not recorded, the

1 conversation, in my mind, didn't happen?

2 A. Yes, sir. In the context of deploying an
3 informant operationally, it needs to be recorded.
4 But we should distinguish from when I'm sitting in a
5 controlled environment with the person who is
6 cooperating and their attorney and other agents and
7 attorneys. There's a difference there.

8 Q. Okay. People you've interviewed -- people
9 you've recruited or enlisted as informants --
10 there's always a concern they're not honest with
11 you?

12 A. I mean, there is always a concern my kids
13 aren't honest with me.

14 Q. That isn't the question, though. I'm
15 talking about informants. Isn't that the concern
16 all the time?

17 A. And my answer is, I'm always concerned
18 people aren't honest, to include informants.

19 Q. But you don't search your kid for drugs
20 after you send them to get drugs or sell drugs;
21 right? You only search informants. Isn't that
22 true?

23 A. No, I don't use my children to purchase
24 drugs.

25 Q. Obviously, I'm making light of it to make

1 the point. But I mean, you never fully trust them
2 to where you have to search them when they've been
3 involved in a controlled buy or some other scenario
4 where you need to make sure that they investigate
5 the integrity of that buy or the controlled delivery
6 is intact.

7 A. Yeah, I agree with you in part, but that's
8 just part of the protocols. It's not a good
9 controlled buy if we're not doing a search on the
10 front end and the back end.

11 Q. Of course.

12 A. Even if I trusted the person, I'd still
13 search them.

14 Q. Right. So these witnesses that you've
15 discussed or cooperators you've talked to -- it's
16 not always the cash payments or other benefits,
17 other incentives, other consideration I think you
18 and Mr. Castle discussed, consideration that's
19 involved; is that true?

20 A. I don't understand.

21 Q. Well, sure. It's not always cash; right?
22 There is something more valuable than cash, isn't
23 there?

24 A. Is there? I guess it's in the eye of the
25 beholder.

1 Q. If you're in the SNM, what is more
2 valuable than cash if you're sitting behind bars?

3 A. Respect and freedom.

4 Q. Right. Less time or no time; right?

5 A. Probably.

6 Q. That's a form of consideration; right?

7 A. Yes.

8 Q. And in some instances, probably in these
9 instances, probably more valuable than cash, \$80,000
10 or whatever notwithstanding; is that true?

11 A. You're asking me to speculate, but yes,
12 probably.

13 Q. When you -- over the years of experience
14 you've developed as a patrol officer and then an
15 officer in Portland and then later with the Bureau,
16 Agent Acee, you've come across scenarios where
17 witnesses, cooperators or otherwise, will talk with
18 you, but I think Mr. Castle did a good job of
19 enumerating the reasons why: Fear and currying
20 favor with the Bureau. I mean, after all, you are
21 the FBI and the people either fear it, respect it,
22 or sometimes they just want to curry favor with you
23 because they want to get on your good side; is that
24 true?

25 A. Some people.

1 Q. Sure. Right? I mean, it's reasonable to
2 expect that, isn't it?

3 A. From some people, yes.

4 Q. Okay. Let me pivot, Mr. Acee, to the 2001
5 murders at Southern New Mexico Correctional
6 Facility, what everyone calls Southern. We'll refer
7 to it as Southern as the trial goes on. You'll
8 remember that Southern New Mexico Correctional
9 Facility will be commonly referred to as Southern;
10 is that right?

11 A. Yes, sir.

12 Q. Now, we did a field trip up there.
13 Defense counsel did a field trip up there. You've
14 been up there, right? Being the good agent you are,
15 you've been up there?

16 A. I have been up there.

17 Q. And you've been to yellow pod?

18 A. Yes.

19 Q. All right. Yellow pod -- if you get up in
20 the bubble -- do you remember the bubble?

21 A. I've been in the bubble.

22 Q. The bubble is essentially a guard station
23 that sits on top of the pod, and the pod is divided
24 into living quarters on one and two floors. It's
25 divided kind of like an L-shape; is that right,

1 Mr. Acee?

2 A. Yes.

3 MR. SOLIS: May I move away from the
4 podium, Your Honor?

5 THE COURT: You may.

6 BY MR. SOLIS:

7 Q. I'm stepping, the record should reflect,
8 about where the court reporter sits, and about maybe
9 10 feet from the wall, the east wall. And Mr. Acee,
10 I want to walk and then turn, and you tell me if
11 that is about the parameters of the bubble going
12 into that pod. I'm walking this way, towards the
13 jury box, and I'm going to turn this way, away from
14 you, but still over by the jury box. And I stop
15 here, about halfway down the jury box is what the
16 record should reflect.

17 Isn't that the basic vantage point of the
18 security guard there at the pod, Mr. Acee? Did you
19 see me walk? Do you want me to do it again?

20 A. I see you walking, and I think you're
21 illustrating something. I'm just not following it.

22 Q. Well, you know, you get up in the pod and
23 get up in the bubble.

24 A. In the bubble.

25 Q. You're in the bubble. There is a guard up

1 there, and he can see through these glass windows.

2 You follow me?

3 A. Yes.

4 Q. And he can see this way; right?

5 A. Yes.

6 Q. You can see from right to left and left to
7 right, and it's kind of divided in an L or a curved
8 L.

9 A. The building that houses the bubble, yes.

10 Q. You've been up there?

11 A. Yes.

12 Q. And you've seen that. And so I have a
13 rough kind of diagram or scenario that I've just
14 kind of walked through. You're familiar with what
15 I'm talking about?

16 A. I think so. Are we saying the cells are
17 over here where I'm sitting?

18 Q. Sure.

19 A. Yes.

20 Q. From where you're sitting -- and I'm
21 looking out that way, looking towards the jury box,
22 there are two levels of cells. And as I walk
23 towards you in front of His Honor, Judge Browning,
24 and the court reporter, there are more cells; is
25 that correct?

1 A. Yes.

2 Q. And over here where I wave my hand, there
3 are glass partitions or glass windows, let's call
4 them; is that right?

5 A. Yes.

6 Q. All right. So you went out there. And
7 it's very confined, isn't it? Isn't it, sir?

8 A. It's fairly confined, yes. The prison
9 is --

10 Q. Very confined, in that pod, in particular,
11 for my purposes?

12 A. Yes.

13 Q. And you know, having been out there, that
14 in 2001 -- at least that's the way it was explained
15 to us -- there weren't any cameras out there.

16 A. I agree with you.

17 Q. Right? And you know that it being a
18 confined environment, that these cameras would be
19 very discernible. You couldn't miss them. If you
20 go now -- you've been there now; right?

21 A. Yes.

22 Q. At least in the last few years?

23 A. Yes.

24 Q. And you can't miss these cameras. They're
25 there.

1 A. Yes.

2 Q. Is that true? Right. And if you and I
3 were here -- let me pivot this way. So you and I,
4 Agent Acee, and a few others are living in these
5 quarters that I've described, and let's say it's
6 this courtroom, and we've lived here for six months
7 to a year, two years. This is where we eat and
8 sleep, where we play checkers and chess and watch TV
9 and the Super Bowl and all that. This space
10 confined here -- maybe even smaller, but let's use
11 this courtroom for an example. Do you follow me?

12 A. Yes.

13 Q. So after a while, this being the living
14 quarters that you reside in, that you exist in,
15 essentially, you and I would know that behind me, in
16 front of you, this wall, there is a clock with three
17 cameras below it, an exit sign, and a door. Do you
18 see that?

19 A. Yes.

20 Q. And we've come to know that just like
21 that, second nature.

22 A. We would.

23 Q. And we'd know there would be six lights
24 above Judge Browning's chambers -- or bench, rather.
25 We would know that because we have seen this day

1 after day, existence after existence. We would
2 become so familiar with that. Do you agree with
3 that?

4 A. Yes.

5 Q. I heard Agent Nancy Stemo say -- or
6 testify at the pretrial hearings on this matter that
7 she reviewed the file thoroughly, beginning to end,
8 completely. Do you remember that?

9 A. No. But knowing her, I'm sure she did.

10 Q. And you tasked her to do that, no doubt?
11 She's one of your agents?

12 A. Yes, sir.

13 Q. You being the case agent. And you've done
14 that, too?

15 A. Yes.

16 Q. Of course, you've had several years to do
17 that; right?

18 A. Yes.

19 Q. I've had 63 days and counting, and I'm
20 still doing that.

21 A. Seems like you're doing a good job.

22 Q. Well, we'll see. Now, as a result of
23 having that time to review the file, you know that
24 the New Mexico State Police and what I call STIG --
25 is it STIG or SIG -- the State Police, the

1 corrections unit that investigates --

2 A. The STIU, sir.

3 Q. STIU. I don't know why I said STIG. But
4 anyway, they did their investigation. You know
5 that?

6 A. They had.

7 Q. Although it was 2001, 17 years ago, this
8 was not in the 1960s or the 1950s, or even the 1970s
9 or 1980s. It was just 17 years ago; right?

10 A. Yes.

11 Q. All right. And so you know they had their
12 preservation and gathering techniques as far as
13 evidence and forensic evidence is concerned. You
14 know that?

15 A. Are you asking me if those techniques
16 existed then?

17 Q. No, I'm asking you whether you know that's
18 how they gathered and preserved evidence in
19 reviewing the file.

20 A. They made an attempt at that.

21 Q. You saw the evidence. In fact, there was
22 DNA evidence gathered and they retested it; right?

23 A. To some extent.

24 Q. Well, but that happened?

25 A. Again, to some extent.

1 Q. Okay. Well, have you retested anything?

2 A. We're not able to retest items that have
3 been tested.

4 Q. So the State Police investigation resulted
5 in what Mr. Castle addressed a little while ago --
6 earlier this morning, actually, the declination by
7 the state prosecuting authority, the Third Judicial
8 District, I guess, district attorney. Do you
9 remember that?

10 A. Yes, sir.

11 Q. And then he also addressed with you the
12 declination letter by the Department of Justice in
13 2015. Do you remember that?

14 A. By Mr. Burkhead at the U.S. Attorney's
15 Office.

16 Q. He explored that at length with you,
17 Mr. Castle did. Do you remember?

18 A. He did.

19 Q. All right. So other than these
20 informants, these cooperators we've talked about,
21 and the manner and the means by which they've been
22 provided consideration, cash or otherwise, what has
23 the FBI's contribution been, other than the
24 cooperators we've talked about?

25 A. Are you going to let me answer that?

1 Okay. The FBI did a thorough review of the case.
2 The FBI has removed over 100 members of the SNM
3 prison gang from the streets of New Mexico. We've
4 recovered dozens of firearms. We've solved six
5 cold-case homicides.

6 Q. Okay.

7 MR. SOLIS: Could I have a moment, Your
8 Honor, just to gather my notes here?

9 THE COURT: You may.

10 MR. SOLIS: Thank you.

11 BY MR. SOLIS:

12 Q. Going back to the declination letter that
13 Mr. Castle explored with you and reviewed with you
14 essentially line by line -- do you remember that
15 earlier this morning, Mr. Acee?

16 A. Yes.

17 Q. So that letter was not addressed to you.

18 A. No, sir.

19 Q. Nor was it drafted by you.

20 A. Correct.

21 Q. You simply reviewed -- well, you -- I
22 think your testimony is, you came across the letter
23 and you reviewed it, and you discussed line by line
24 through testimony with Mr. Castle earlier today; is
25 that right?

1 A. And on other days, yes.

2 Q. And on other days. But here for purposes
3 formally on the record as an exhibit in evidence, do
4 you remember that?

5 A. Yes, sir.

6 MR. SOLIS: May I approach the witness,
7 Your Honor?

8 THE COURT: You may.

9 MR. CASTELLANO: Your Honor, while he's
10 having the witness review the document, I'll note my
11 objection for hearsay. I anticipate that the
12 question will elicit a hearsay response. And unlike
13 Mr. Castle's document, this is not a statement by a
14 party opponent.

15 MR. SOLIS: The question I'll pose to
16 Agent Acee, Your Honor, will simply be whether the
17 contents of that letter illustrates Mr. Chavez to be
18 listed as a suspect, nothing more; not who told him,
19 but much like he explored the contents of previous
20 documents, and he explored it line by line with
21 Mr. Castle, and I'll ask him to do the same here. I
22 won't ask him who it was drafted by or addressed to,
23 but rather, has he seen the document; being the case
24 agent, he's reviewed the entirety of the file, and
25 simply ask him where he sees Mr. Chavez listed as a

1 suspect on that document.

2 THE COURT: Well, I think if we're having
3 him testify about the contents of this document,
4 that would not be proper. So I'll sustain that
5 objection to that question.

6 MR. SOLIS: Thank you, Your Honor. May I
7 retrieve the exhibit?

8 THE COURT: You may.

9 BY MR. SOLIS:

10 Q. Does the name Josh Mirka ring a bell,
11 Agent Acee?

12 A. Yes.

13 Q. Mirka, M-I-R-K-A. So is he listed as a
14 cooperator?

15 A. I think he's on the Government's witness
16 list, but he's not an FBI informant.

17 Q. Okay. But he is a witness.

18 A. Yes.

19 Q. Have you had conversations with Mr.
20 Mirka's counsel?

21 A. I have.

22 Q. And did these conversations occur with
23 Mr. Mirka's counsel before or during Mr. Chavez's
24 absence when he was transported for medical
25 treatments to Albuquerque?

1 A. I'm not sure when he was transported.

2 Q. Let's let everyone in on when we're
3 talking about. These conversations had to have
4 occurred in the last month and a half; correct?

5 A. Yes, sir. It happened on a day I was in
6 court with you, and I went out in the hallway and
7 stood by the window and I called her. I could
8 figure out the date. I just don't know it off the
9 top of my head, but it was recently.

10 Q. So we were in court?

11 A. Yes, sir.

12 Q. I was definitely in court.

13 A. I try to keep my eye on you, but I think
14 you were. Mr. Chavez was in court.

15 Q. Given the timeframe that we're talking
16 about, I probably was in court. Then that helps me
17 with -- you don't know the exact date of when you
18 spoke to the lawyer for Mr. Mirka?

19 A. I wrote a report on it that will reflect
20 the date.

21 Q. Do you know if that's been disclosed or
22 provided?

23 A. I turned it over.

24 Q. All right. And subsequent to that
25 conversation, did you have a conversation with both

1 Mr. Mirka and the lawyer?

2 A. No, another agent did. I was attending
3 another matter.

4 Q. And do you know when that happened?

5 A. It may have happened over the weekend,
6 this last weekend. I'm not 100 percent certain
7 because I wasn't there. And because I've been in
8 court, I haven't reviewed all the reports that have
9 come in, but it was recently.

10 Q. And by "last weekend" you mean four or
11 five days ago?

12 A. Perhaps.

13 Q. When I say -- when I asked whether you had
14 the conversations with Mr. Mirka or counsel for
15 Mirka, or both, while Chavez was being -- Chris
16 Chavez was transferred for treatment to
17 Albuquerque -- you know what I'm referring to, don't
18 you?

19 A. I'm not sure I do, and I don't want to
20 say -- I may, but I don't want to say something I
21 shouldn't.

22 Q. Then probably you don't.

23 THE COURT: Would this be a good time for
24 us to take our --

25 MR. SOLIS: I was about to say, Your

1 Honor, that -- thank you for your responses. I'm
2 confident that the responses that I've asked that
3 may not make sense now will as the trial develops.
4 Thank you. I'll pass the witness.

5 THE COURT: Thank you, Mr. Solis.

6 All right. Let's take our afternoon break
7 here. We'll be in recess for about 15 minutes. All
8 rise.

9 (The jury left the courtroom.)

10 THE COURT: All right. Just so our record
11 is clear, the clerk's exhibit to her minutes, the
12 juror note, will be Exhibit 1. The juror note.

13 Clerk's Exhibit 2 will be the documents
14 regarding Daniel Archuleta and the taint team. And
15 I believe that I have provided a copy of that now to
16 the Government and to, I believe, Mr. Castle. So if
17 he can make it available to everybody else.

18 The clerk's Exhibit 3 will be the
19 documents regarding Sergio Rodriguez which are being
20 provided to the Government and also to Mr. Castle,
21 and we'll make those -- and I'll hear your comments
22 after the break. And Mr. Sindel, keep a copy of
23 this, but see if you can live with the changes I
24 made to your proposed jury instruction, limiting
25 instruction.

1 MR. SINDEL: Well I've had to live with a
2 lot these last few days, but I guess one more --

3 THE COURT: Take a look at them. You
4 might like what I say. You might not.

5 MR. SINDEL: I have several times so far.

6 THE COURT: Would you keep a copy of that?
7 Because we need to mark it so everybody can see what
8 you and I are communicating on.

9 And I'll hear your comments when we get
10 back, Mr. Castle. Let's be in recess about 15
11 minutes.

12 (The Court stood in recess.)

13 THE COURT: All right. Let's do this.
14 We've already got the jury lined up. I'll bring you
15 up to the bench before we get done with this witness
16 to do anything.

17 All right. All rise.

18 (The jury entered the courtroom.)

19 THE COURT: All right. Everyone be
20 seated.

21 All right. Mr. Acee, I'll remind you
22 you're still under oath.

23 Ms. Torraco, if you have cross-examination
24 of Mr. Acee, you may conduct it at this time.

25 MS. TORRACO: Thank you, Your Honor.

1 THE COURT: Ms. Torraco.

2 CROSS-EXAMINATION

3 BY MS. TORRACO:

4 Q. Agent Acee, what I would like to do, if
5 it's all right to you, I want to go through your
6 cross-examination almost like it's an outline to
7 make it easier for the jurors to follow.

8 A. I'll try to keep up.

9 Q. I think you're going to surpass me, so
10 don't worry about that. First, I'd like to start
11 with how you began this investigation. So that will
12 be like our first point of the outline. So on
13 direct, you testified that you were doing a separate
14 prison gang investigation. Isn't that true?

15 A. Yes.

16 Q. And it just came about that you just were
17 pulled aside by some corrections officers about a
18 concern about some letters that had gone out of the
19 penitentiary; is that correct?

20 A. They didn't make their way out. They were
21 intercepted. But otherwise, yes.

22 Q. Well, I think one of them made its way
23 out; is that correct?

24 A. Yes.

25 Q. There were nine letters; correct?

1 A. Yes.

2 Q. And you were able -- or the corrections
3 officers were able to intercept eight letters?

4 A. Yes, ma'am.

5 Q. And those letters were addressed -- or
6 those letters were -- the topic was that there was a
7 hit that had been placed on the New Mexico
8 Department of Corrections secretary, Mr. Marcantel;
9 correct?

10 A. Yes.

11 Q. And Dwayne Santistevan and the STIU
12 coordinator, Adam Vigil; is that correct?

13 A. Mostly, ma'am. The letters directed the
14 members on the street to hit Marcantel and
15 Santistevan. The Vigil situation developed later.

16 Q. Thank you for the clarification. So how
17 many of those eight letters were addressed to my
18 client, Andrew Gallegos?

19 A. None of them.

20 Q. And how many of those letters mentioned
21 Andrew Gallegos?

22 A. None.

23 Q. And were any of those letters from Andrew
24 Gallegos?

25 A. No.

1 Q. In fact, isn't it true that Andrew
2 Gallegos was not involved in any way on the hit on
3 Gregg Marcantel, Dwayne Santistevan, or Adam Vigil?

4 A. That's correct.

5 Q. So this part of the case really has
6 nothing to do with Andrew Gallegos; isn't that true?

7 A. I don't want to be difficult, but I don't
8 know if we'll agree there.

9 Q. Well, I don't want you to be difficult
10 either. But he had nothing to do with that; isn't
11 that true?

12 A. As an individual, he did not.

13 Q. That's right. And I don't know what else
14 he is besides an individual. He's an individual;
15 right? He's a person.

16 A. He is.

17 Q. He's one person?

18 A. He is.

19 Q. As a matter of fact, he's sitting right
20 over there.

21 A. Yes.

22 Q. Right? Next to co-counsel Donovan
23 Roberts. And you have no reason to believe that
24 Andrew Gallegos even knew about the hit on Gregg
25 Marcantel; isn't that true?

1 A. That is true.

2 Q. Okay. So that's how the investigation
3 began. And I want to go on to my second point,
4 which is what you did next. And so at that point,
5 isn't it true that you formed a federal task force?

6 A. Yes.

7 Q. And on that task force you put together
8 several different agencies; is that true?

9 A. Brief, yes.

10 Q. And what are those three agencies?

11 A. The FBI, the New Mexico Corrections
12 Department, and the Bernalillo County Sheriff's
13 Office were the full-time participants.

14 Q. Okay. And did you do something with the
15 cold-case unit?

16 A. I contacted all the cold-case units around
17 the state and asked them to send us any leads or
18 cold cases they had that they thought might involve
19 the SNM.

20 Q. Okay. So that's outside of those three
21 agencies, then, you also contacted all these
22 cold-case units?

23 A. Yes, ma'am.

24 Q. Correct? Okay. So there was a lot of
25 information coming in from a lot of different

1 sources, all law enforcement at this point; correct?

2 A. Yes.

3 Q. And isn't it true that solving a cold case
4 is typically very difficult in the law enforcement
5 community?

6 A. Yes.

7 Q. And in fact, it has a lot of status, if
8 you can actually solve a cold case.

9 A. Maybe on television.

10 Q. There is a television show about that,
11 isn't there?

12 A. For us, I guess in our subculture, it's
13 just another case.

14 Q. Okay. But you did identify -- when Mr.
15 Solis was asking you questions, you did identify
16 that six cases that you solved were cold cases.

17 A. Thus far.

18 Q. Okay. And so that must mean something
19 different than just solving a regular case; correct?

20 A. Well, it was in response to what had the
21 FBI done lately, I think, and so I was just pointing
22 out that solving homicides is always important and
23 it's a little more challenging when they've gone
24 cold.

25 Q. Fair enough. It is more challenging. And

1 maybe that's what I was trying to get to. What are
2 those six cold cases?

3 A. I thought we weren't going to test me, but
4 I'll give it my best shot.

5 Q. Let me ask you this.

6 A. I think I can get them.

7 Q. That's fine.

8 A. Garza and Castillo, 2001. Sanchez, 2007.
9 Burns, 2012. Michael Giron, 2014. Shane Dix, 2005.
10 I guess I've done six.

11 Q. Okay. But aren't four of those cold cases
12 in this trial here?

13 A. Yes.

14 Q. So how do you consider those closed, if
15 there hasn't been a verdict on those four cold
16 cases?

17 A. "Closed" is your word. I said "solved."
18 Not closed. We've charged.

19 Q. Okay. So solved. I thought your word was
20 you also solved six cold cases.

21 A. Yes.

22 Q. So you see those as solved, and I, as the
23 lawyer, see them as still pending. Isn't that true?

24 A. And we agree they're not closed, yes.

25 Q. Okay. Fair enough. Thank you. Would you

1 also agree that solved is your opinion; isn't that
2 true?

3 A. I think it's -- in law enforcement -- it's
4 not my opinion. I've learned --

5 MR. CASTLE: Your Honor, I'm going to
6 object to improper vouching.

7 MS. TORRACO: Your Honor, I'd like --

8 THE COURT: Do you still want to pursue
9 the question?

10 MS. TORRACO: Well, I'd like to make the
11 point that it's the jury's decision as to whether or
12 not the agent has properly solved these cases.
13 Isn't that true? May I proceed with that line of
14 questioning?

15 THE COURT: You can ask that.

16 MS. TORRACO: Thank you.

17 BY MS. TORRACO:

18 Q. Isn't that true, Agent?

19 A. The jury will reach a conclusion.

20 Q. And we both hope they reach the correct
21 conclusion; isn't that true?

22 A. Yes, ma'am.

23 Q. I'd like to go on to some of your types of
24 investigation techniques. I believe you testified
25 about those on your direct examination.

1 A. Yes, ma'am.

2 Q. And you put them into two different
3 categories; isn't that true?

4 A. Yes.

5 Q. And you put them into a category of
6 traditional investigative techniques; correct?

7 A. Yes.

8 Q. And those -- I believe you testified that
9 those are just regular interviews; right? That's
10 one traditional?

11 A. Among other techniques, yes.

12 Q. I think you listed a whole bunch of
13 things: Photographs, things like that. Is that
14 correct?

15 A. Taking photographs, yes; surveillance and
16 things of that nature, yes.

17 Q. Those are pretty traditional?

18 A. Yes.

19 Q. And then you called it -- and then you
20 said there is a second category, and you classified
21 those as more sophisticated techniques.

22 A. Yes.

23 Q. And would you agree that we can call them
24 traditional techniques and nontraditional
25 techniques? Would you agree with that?

1 A. Sure.

2 Q. Okay. And so let's go through some of the
3 more nontraditional techniques. So on direct from
4 the Government, you testified how you would go into
5 a probation or parolee's home, search their home --
6 and you're allowed to do that without a warrant --
7 and then if you would find something, you had
8 opportunity right there to be on site and conduct
9 those interviews. Is that a fair summation?

10 A. Yes, ma'am.

11 Q. And isn't it true that it is not unusual
12 for someone who first gets out of jail to actually
13 have some kind of contraband. Isn't that true?

14 A. It sometimes happens.

15 Q. Okay. It does sometimes happen, because
16 isn't it true that people get drugs while they're in
17 custody?

18 A. People can get drugs in custody.

19 Q. And people can come off the streets while
20 they're an addict; isn't that true?

21 A. Yes, I think there can be an addict in all
22 environments.

23 Q. Okay. And then once they're in, it's
24 possible they could continue using while they're in
25 the penitentiary. Isn't that true?

1 A. Yes.

2 Q. And then when they're released, all of a
3 sudden they're supposed to stay clean; correct?

4 A. If they have some kind of supervised
5 release, yes.

6 Q. As a matter of fact, the New Mexico prison
7 system is actually called the Department of
8 Corrections. Isn't that true?

9 A. I think if New Mexico is one of those
10 states where they switched the C, so it's the
11 Corrections Department. We call it COD, but it's
12 NMCD.

13 Q. Okay. You're right. Thank you very much
14 for that. So there is really not a whole lot of
15 corrections that goes on inside the pen; isn't that
16 true?

17 A. I guess each inmate makes it what they
18 want it to be.

19 Q. Well, sort of. There are some limitations
20 that each inmate can do; isn't that true? They're
21 in jail for a reason?

22 A. Probably some challenges.

23 Q. Yes. So when they get out, if someone was
24 taken in for a drug charge and with an addict, there
25 is a good chance when you go out with probation and

1 parole, that you're going to find drugs; isn't that
2 true?

3 A. It's a possibility.

4 Q. And when you're out at this probationer's
5 house, you can then confront them with the
6 possibility, if it happens to be a weapon or if
7 they're on federal charges, you can then confront
8 them with the threat of a federal indictment. Isn't
9 that true?

10 A. I could.

11 Q. You could. And in that case, that's one
12 way that you could try to get someone to flip;
13 correct?

14 A. Yes.

15 Q. And that would be actually a very
16 effective way to get someone to flip, because nobody
17 wants to go back inside. Isn't that true?

18 A. I met a guy that didn't mind going back.
19 Most of us would probably not choose that.

20 Q. Most people don't choose that life.

21 A. Most people don't choose that life if
22 given an opportunity.

23 Q. Okay. And so if you're there with
24 probation and parole, you have a very good chance of
25 getting an informant; correct?

1 A. Yes.

2 Q. And you going with probation and parole to
3 someone's house is actually very nontraditional;
4 would you agree with that?

5 A. I don't agree, no. I've done that my
6 whole career, either as a detective or an agent.
7 It's common. And I don't dress in FBI clothing.

8 Q. Okay. So for you, that's not -- that's
9 still a traditional technique?

10 A. Yes, we teach it. I encourage other
11 agents that I train to do it. I think, for me -- I
12 don't want to be difficult -- I think it's just a
13 standard technique.

14 Q. Okay. So on direct you testified that
15 sometimes people would abide by a code of silence.
16 Isn't it true that it's possible that they might not
17 know the information that you want, and that's why
18 they don't talk?

19 A. Are we saying specifically within the SNM
20 or --

21 Q. No, just whenever you go out to one of
22 these parolee's house, there's a gun in the house
23 and you say, "Where did you get the gun?"

24 And they say, "I honestly don't know where
25 this came from." Isn't it possible that could be

1 true?

2 A. That's possible.

3 Q. So sometimes when people don't talk, it's
4 not necessarily because they're abiding by some code
5 of silence. Is that fair to say?

6 A. Yes, ma'am.

7 Q. Okay, thank you. And just backing up to
8 when you got out to try to get these informants to
9 flip and get more intelligence, do you record those
10 interviews?

11 A. If I'm trying to flip somebody, generally
12 I do not.

13 Q. And there is no mandatory policy that you
14 have to record; right?

15 A. No.

16 Q. And isn't it also true that sometimes in
17 these interviews people will lie to you? I think
18 every attorney has gotten up here and asked that;
19 right?

20 A. People lie to me all the time.

21 Q. Okay. So I'll take that as a yes.

22 A. Sometimes people lie to me.

23 Q. Okay. Now, on direct you testified that
24 there were approximately 80 to 90 controlled buys in
25 your case -- your investigation of the SNM?

1 A. Yes, ma'am.

2 Q. Is that what your testimony was?

3 A. Yes.

4 Q. Would you consider that to be a very high
5 number of controlled buys?

6 A. No.

7 Q. Not for one gang investigation?

8 A. No.

9 Q. Okay. Did you ever buy from Andrew
10 Gallegos?

11 A. No.

12 Q. You also testified about the quick
13 reaction force, which was pretty interesting. And I
14 believe you testified that's where your arresting
15 officers can be, like; down the street or just a
16 minute away?

17 A. Yes, ma'am. It's usually SWAT officers.
18 They are nearby and prepared to react. They already
19 have all their equipment on. They're dressed and
20 ready, so to speak.

21 Q. And would you say that this is something
22 that also, again, is a traditional way of operating?

23 A. Yes.

24 Q. And when you have the quick reaction
25 force, QRF, are you in charge of them?

1 A. I am, only because in addition to being a
2 case agent, I'm one of our SWAT team leaders. So I
3 would have, unless I delegated that to somebody
4 else, yes.

5 Q. So that's kind of cool. So you tell them
6 where to go and when to react?

7 A. We plan on predetermined signal, and
8 they're -- you know, they're not sitting on their
9 stuff. They're ready to go with that signal.
10 That's just their sole purpose for being there.

11 Q. Okay. And at that point in time, you're
12 the boss of everybody; right? And do you give the
13 signal? Sorry. I didn't get the boss of everybody.

14 A. Oh, I'm supposed to answer that? Am I the
15 boss of everybody?

16 Q. You're the boss of the quick reaction
17 force?

18 A. I'm coordinating that scene, I guess.

19 Q. Okay. And since you are the SWAT team
20 leader, you are also in charge of the SWAT team if
21 they are involved that day; right?

22 A. Unless I'm in court, yes.

23 Q. And we're going to keep you here as long
24 as possible. We're going to try to bore jury to
25 death. They are just going to be fed up with us by

1 the end of the trial. Just kidding.

2 A. I'll try to make it exciting.

3 Q. Yeah. I think you might already be doing
4 that.

5 And then when you testified on direct, you
6 said that you would go in and rescue the either
7 undercover officer or the confidential informant?

8 A. No, ma'am. I don't think that's what I
9 said. But that's what the QRF is there for, in case
10 a rescue need be made. It's like a drug raid, where
11 something goes wrong, we can't say, "Hey, something
12 is going wrong, everybody get in the trunk of the
13 car, get your vests on and get your rifles."

14 We need a team who can drive right up and
15 get into it.

16 Q. I did review the transcript, and you did
17 say that the quick reaction force is always there so
18 that you can go in and rescue either the
19 confidential informant or the undercover police
20 officer.

21 A. I'm sorry if I sounded like I was
22 disagreeing. But that's why they're there, yes.

23 Q. Okay. And tell me just briefly about the
24 gun sales on the reverse operation. When you did
25 the Juarez Cartel, did you use those reverse gun

1 sales?

2 A. Yes. In investigating the Juarez Cartel,
3 I did do some gun reverses.

4 Q. Okay. And let's go to a little bit more
5 what I would think is nontraditional techniques, but
6 maybe you'll correct me and they're not. But you
7 did go speak to my client while he was in custody,
8 isn't that true, in 2015?

9 A. I caused him to be brought to our office,
10 and he was in custody at the time.

11 Q. Okay. And on that date in April, did you
12 interview (sic) your discussions with him? Did I
13 say "interview"? Did you record your discussions
14 with him?

15 A. I don't believe so.

16 Q. Okay. And isn't it true that you
17 presented him with the indictment that you were
18 going to present as a witness to the grand jury?
19 And this is in April of 2015.

20 A. He had not yet been indicted and I showed
21 him it? I don't know that that's possible. I may
22 have showed him the Phase 1 indictment.

23 Q. You showed him a draft, and it was four
24 days before the grand jury presentment on April 21
25 of 2015. And there is a report that says that you

1 met with him.

2 A. Well, I believe that I met with him. I
3 recall that. I just don't typically get the draft
4 indictments until the day of or maybe the night
5 before, because the attorneys aren't done revising
6 them. It wouldn't be unlike me to show somebody a
7 similar indictment, but I don't know that I had the
8 draft four days before.

9 Q. I'm telling you the wrong date. It was
10 2016. I think I said --

11 A. That I met Mr. Gallegos at the FBI office?

12 Q. I believe so?

13 A. Okay. I'm just --

14 Q. I'm saying '15 and it's actually '16,
15 because the indictment was in '16. And isn't it
16 true that you did talk to him, though, about the
17 case going to grand jury?

18 A. I probably did.

19 Q. And isn't it true that you asked him that
20 you wanted his testimony?

21 A. I don't know that I wanted his testimony,
22 but I wanted him to talk to me.

23 Q. Okay. Fine. So you wanted him to talk to
24 you about the Adrian Burns murder; isn't that true?

25 A. Yes.

1 Q. And isn't it true that he told you he
2 didn't know anything about it?

3 MR. CASTELLANO: Objection, hearsay.

4 THE COURT: Sustained.

5 BY MS. TORRACO:

6 Q. Isn't it true that he didn't have any
7 information to offer you?

8 MR. CASTELLANO: Hearsay.

9 THE COURT: Sustained.

10 BY MS. TORRACO:

11 Q. Isn't it true you didn't get anywhere?

12 MR. CASTELLANO: Objection. I don't know.

13 THE COURT: I don't think we need to be
14 eliciting any statements of your client to Mr. Acee
15 here.

16 BY MS. TORRACO:

17 Q. And why would you go to someone who you're
18 going to indict in four days to let them know what
19 was coming down the pike?

20 A. Again, in this case, he came to our
21 office.

22 Q. I believe he was in custody, so he was
23 transported to your office.

24 A. I'll clarify that. It's a little more
25 impactful to meet at our office, and I wanted that.

1 Q. Impactful for the jury? I mean, he was in
2 custody. He was transported. Isn't it true he
3 didn't have a choice?

4 A. He didn't have a choice and I don't think
5 he knew where he was going when he arrived.

6 Q. Okay.

7 A. So I'm saying that I think it was more
8 impactful for my meeting with him to serve my
9 purposes.

10 Q. And what were your purposes?

11 A. To see if he would talk to me about the
12 Burns murder. Whether he cooperated or not, I mean,
13 I had a habit of trying to charge and with some
14 success charging the cooperators.

15 Q. And that would be a way to flip someone;
16 correct?

17 A. That's what I was trying to do.

18 Q. And obviously, that was not successful;
19 right?

20 A. It was not.

21 Q. It was not. I think that question would
22 satisfy everyone. And isn't it true that you also
23 threatened him with the death penalty?

24 A. No. I've been accused of that a few
25 times, but I'm careful in how I say that.

1 Q. What do you say?

2 A. I advise people what the guideline range
3 is and what the potential penalties are.

4 Q. So at that meeting you did advise him that
5 he would be facing the death penalty in four days?

6 A. No, not the way you've said that. Because
7 he wasn't facing the death penalty in four days.
8 The statute, as you probably know better than I, is
9 life or potentially the death penalty. And that's a
10 determination made by the attorney general. So I
11 have to be careful in how I say that. I'll advise a
12 person what they're looking at, but I don't say,
13 "Hey, you're going to get the death penalty."

14 Q. Okay. And let me move on to what I would
15 call the third topic, the credibility of informants.
16 And I know that so many of the attorneys have gone
17 over this so much, so I will keep it brief. But
18 didn't you search my client's cell in September of
19 2016. You got a search warrant to search his cell?

20 A. With a filter team.

21 Q. I'm sorry?

22 A. I'm trying to remember which of the
23 locations had filter teams. He may have been one of
24 the ones.

25 Q. I can give you the Bates No. and approach

1 you with my computer that has the search warrant on
2 it. Do you want to do that?

3 A. Thank you.

4 Q. It's Bates 21923. If you'll give me just
5 a moment. I'd like to say it's technical
6 difficulties. It might be human error.

7 A. I can pull it up, too, if you'd like me to
8 retrieve my computer.

9 MS. TORRACO: What's the Court's pleasure?
10 I could move on while they look for it, or could
11 Agent Acee step down and get it?

12 THE COURT: He's welcome to.

13 BY MS. TORRACO:

14 Q. It's Bates No. 21923.

15 (A discussion was held off the record.)

16 A. To answer your question, Mr. Andrew
17 Gallegos was one of the subjects of the search
18 warrant.

19 Q. Okay. And why did you get a search
20 warrant to search his cell?

21 A. We were -- I got 12 search warrants to
22 address threats to witnesses and informants in this
23 case.

24 Q. Okay. And isn't it true that you -- I
25 don't know if you did the return of search, but that

1 the search recovered a Bible?

2 A. A taint team or a filter team was used,
3 and I don't know that to this day I've seen the
4 results of that. But I did do the search warrant
5 return.

6 Q. Okay. So I don't understand. If you did
7 the search warrant return, how could you not know
8 the results of the search?

9 A. Because a filter team was used. So I had
10 to return the search warrant to the Court, and in
11 that return I note that the searches were conducted,
12 to advise the Court of that; and then I noted that
13 at least I believe three of the 12 people we
14 searched had attorneys, and then I explained to the
15 Court a filter process was used, and that I was not
16 the agent, nor was my team, the agent, doing the
17 searches, so we could honor the attorney-client.

18 Q. Let me ask you some questions. If you can
19 answer them, great. If not, that will be for
20 another witness. Isn't it true that you or the team
21 that did the search did not find any weapons in
22 Andrew Gallegos' cell?

23 A. I believe that's correct.

24 Q. There were no drugs found?

25 A. I also believe that's correct.

1 Q. There were no coded letters or kites?

2 A. I don't know about kites or letters.

3 Q. You don't know?

4 A. I don't know.

5 Q. Or you don't --

6 A. If I could definitively say nothing was
7 found, I would. And I can certainly get back to
8 you. I would need to research. It was different
9 attorneys and different agents that handled that.

10 Q. Okay. That's fine. And there were no
11 fishing lines found; isn't that true?

12 A. I don't think so.

13 Q. Or no discovery materials from this case;
14 isn't that true?

15 A. I don't know.

16 Q. And in fact, what was found was a Bible
17 and two religious books; isn't that true?

18 A. I don't know.

19 Q. You also testified -- and this is my next
20 category on what was Phase 1 of your SNM operation.
21 And you testified before the grand jury; is that
22 correct?

23 A. Yes.

24 Q. And you got your arrest warrants; correct?

25 A. Yes.

1 Q. And you did the takedown with the FBI and
2 the SWAT teams and the armored vehicles and the
3 helicopters, and you were in charge of all that; is
4 that true?

5 A. Well, I think the special agent in charge
6 of the division is ultimately in charge, but I was
7 the case agent.

8 Q. And who was that?

9 A. Terry Wade.

10 Q. And so what were you in charge of that
11 day?

12 A. I was the case agent. So I have -- you
13 know, when I'm around all my bosses, I guess I'm an
14 advisor. When my bosses aren't around, I'm the
15 boss.

16 Q. Okay. Fair enough. So the bosses were
17 there?

18 A. Yes.

19 Q. Because you employed a total of over 500
20 officers and agents; correct?

21 A. Yes.

22 Q. And so this is a very big operation;
23 correct?

24 A. By New Mexico standards, it is.

25 Q. Very big. And there's only a few men

1 still standing; correct? Most of your people have
2 pled out or gone to trial?

3 A. Yes.

4 Q. And yet there are some that are holding
5 strong to their innocence; isn't that true?

6 A. Yes.

7 Q. And as a part of Phase 1, there was a
8 lockdown of five corrections facilities; correct?

9 A. Yes.

10 Q. And there were 45 probation and parole
11 officers that conducted searches, as well; isn't
12 that true?

13 A. I think there were more probation and
14 parole officers, but there were 45 parolees or
15 probationers searched.

16 Q. Okay. And you have less than a handful
17 that are left?

18 A. We have about 14.

19 Q. Now, regarding paying the informants, do
20 you have any idea how much money Andrew Gallegos
21 typically has on his books?

22 A. No.

23 Q. Would you be surprised if I told you that
24 he rarely has money on his books?

25 MR. CASTELLANO: Objection, Your Honor.

1 THE COURT: Sustained. If he said he
2 didn't know, then I think you'll be the one
3 testifying here.

4 MS. TORRACO: Okay.

5 BY MS. TORRACO:

6 Q. I'll move on to my next topic, which is
7 Phase 2, which is the RICO indictment, and that
8 involves this group of defendants; correct?

9 A. Yes, ma'am. No. I'm sorry.

10 Q. We're not in Phase 2?

11 A. Well, now we'd be Phase 4. But this is a
12 combination of -- because there were superseding
13 indictments, so I think this is -- well, this is
14 4268, but I superseded on that indictment, too, so
15 I'm not sure how to answer that.

16 Q. So I'll just withdraw that question.
17 We'll just move on.

18 But Phase 2 was the racketeering phase.
19 And isn't that how you described it in your direct
20 testimony?

21 A. Yes, ma'am. That involved the RICO
22 conspiracy indictment, yes.

23 Q. Okay. Okay. And you talked about how
24 important respect was. You said you don't get
25 anywhere with them if you are not respectful.

1 A. Yes.

2 Q. Isn't it fair to say that that's how most
3 people are?

4 A. Well, I guess some people can be taken
5 advantage of. But I think what I'm trying to say is
6 that with these gentlemen -- and I don't mean these
7 gentlemen, but just in general -- they've got a lot
8 of things stripped away from them, and respect is
9 one thing you can really get somewhere with by
10 showing them.

11 Q. So would it be fair to say that pretty
12 much everything has been taken from them except
13 perhaps some dignity?

14 A. I guess I kind of identify it along those
15 lines, too.

16 Q. Okay. I appreciate that. Now, if you
17 were to sit down and have an interview with me, I
18 mean, you don't expect that you would be successful
19 in that interview if you started off calling me
20 derogatory names; right?

21 A. No, I wouldn't do that.

22 Q. And I know you wouldn't. And it's along
23 those same lines that you're treating all these
24 inmates with respect because you want to get
25 information from them; right?

1 A. It's also professional. And for me, I
2 mean, it's not personal. It's just a job.

3 Q. So you started to tell us how you
4 identified people that were actually associated --
5 or, well, that were associated with the SNM Gang.
6 And Mr. Castillo went through --

7 MR. CASTELLANO: Castellano.

8 MS. TORRACO: I know. As soon as I said
9 it -- I'm sorry.

10 BY MS. TORRACO:

11 Q. Mr. Castellano went through all of the
12 tattoos.

13 A. He went through quite a few tattoos.

14 Q. It broke up the monotony because there
15 were pictures, so we appreciated that.

16 A. Yes.

17 Q. Okay. So let's talk about some of the
18 tattoos. Isn't it true that there are a lot of
19 people who have tattoos?

20 A. Yes.

21 Q. And not everyone who has a tattoo is a
22 gang member?

23 A. Correct.

24 Q. And some people have all sorts -- there
25 are common themes in tattoos all across the board;

1 right?

2 A. Yes.

3 Q. And some people might have tattoos of
4 their professional sports team that they love?

5 A. I've seen that.

6 Q. And some people have religious tattoos?

7 A. Yes.

8 Q. Would it be fair that some people have --
9 and we saw quite a few women tattoos?

10 A. Yes.

11 Q. That seems to be a pretty prevalent theme;
12 right?

13 A. Especially in prison.

14 Q. And that doesn't mean they're in a gang;
15 right?

16 A. No.

17 Q. Of course not. And neither do the
18 religious themes or the sports. And it seems that
19 there is another theme of skulls.

20 A. Yes.

21 Q. And have you seen people do the skull
22 tattoos who are not convicts?

23 A. I've seen FBI agents with those kind of
24 tattoos.

25 Q. The skulls?

1 A. Yeah. Some of the undercover agents.

2 Q. Okay. Well, which comes first? Were they
3 an undercover agent and got the skull? Or did they
4 have the skull and, therefore, they're put
5 undercover?

6 A. They're sometimes a little different, so I
7 don't know.

8 Q. But it's true that people who are law
9 enforcement types and respect laws have skulls as
10 tattoos?

11 A. Yes.

12 Q. And it's also true that a lot of people
13 have zias?

14 A. Particularly in New Mexico.

15 Q. Definitely. Particularly in New Mexico.
16 And those tattoos, the zia tattoos, don't
17 necessarily mean that someone is in the SNM Gang;
18 right?

19 A. Right.

20 Q. And there's people who have the zia
21 tattoos because they have New Mexico state pride, or
22 they love their zia, or they love New Mexico, or
23 lots of reasons; right?

24 A. Yes.

25 Q. Now, at some point you did an interview.

1 And in all candor, I don't remember who you
2 interviewed. But you learned through the course of
3 that interview that there was a number that stood
4 for SNM.

5 A. Oh, I referenced -- I think we've
6 referenced 19 before, for the S.

7 Q. And for some reason, 19 had some
8 association with SNM?

9 A. Just the letter S being the 19th letter, I
10 believe.

11 Q. Okay. Do you know that's why? Is that
12 what you got from the informant, or are you
13 guessing?

14 A. No, I'm trying to remember which -- I
15 think -- I'll usually look at tattoos when I'm
16 interviewing somebody, particularly if they'll allow
17 me to. And I've seen it a couple of times.

18 Q. And I suppose it depends on where they
19 are; right?

20 A. When I look at the tattoos?

21 Q. Right.

22 A. It depends if they're cooperative or if
23 they're in custody, yeah.

24 Q. That's one of the things that they
25 identify when people are arrested. They identify

1 where their tattoos are and what they are?

2 A. The jails usually do, and I like to, as
3 well.

4 Q. And that's important for the identity of
5 the person; not just for an identity of the gang.
6 That's a general -- God forbid you should ever have
7 to identify someone.

8 A. Yes. I mean, in law enforcement we do it
9 for identification. And then in the jail context
10 for where to house them, in case they're affiliated.

11 Q. Okay. Now, I want to move on to
12 specifically discussing the Adrian Burns murder and
13 the count in which Andrew and Joe Gallegos are
14 charged. When you first formed this federal task
15 force to start the SNM investigation, I believe you
16 testified that you interviewed 100 to 150 witnesses
17 right in the beginning.

18 A. I've talked to specifically SNM members,
19 75 to 100. Witnesses in the case, it's probably
20 more than 150.

21 Q. Okay. But in those initial interviews, no
22 one mentioned Andrew or Joe Gallegos. Isn't that
23 true?

24 MR. CASTELLANO: Objection, calls for
25 hearsay.

1 MS. TORRACO: Well, I'm not asking for a
2 statement. But it's not -- and it's -- first of
3 all, there is no statement.

4 THE COURT: I'm still going to sustain the
5 objection.

6 BY MS. TORRACO:

7 Q. You spoke to -- well, isn't it important
8 in the beginning that you gather intel,
9 intelligence?

10 A. In the beginning and all through the
11 process.

12 Q. Right. And that's something the FBI is
13 known for. It's very important for you to gather a
14 lot of information; right?

15 A. Yes.

16 Q. And for a lot of reasons. National
17 security depends on gathering a lot of information;
18 right?

19 A. Yes.

20 Q. Okay. So you didn't get information on
21 the Gallegos brothers in the beginning of your
22 investigation; isn't that true?

23 A. No.

24 Q. And you actually had interviews with some
25 of the people who self-identified as the top-ranking

1 members of the SNM Gang; correct?

2 A. Yes.

3 Q. And you spent hours interviewing those
4 people; isn't that true?

5 A. Yes.

6 Q. And at that point, there was no direction
7 that ever pointed to either Andrew or Joe Gallegos.

8 A. No, that's not true.

9 Q. When you interviewed Baby Rob, isn't it
10 true that he gave you a 61-page statement and never
11 mentioned the Gallegos brothers?

12 MR. CASTELLANO: Hearsay.

13 THE COURT: Sustained.

14 BY MS. TORRACO:

15 Q. You were qualified as an expert in the
16 Juarez gang trial; correct?

17 A. Juarez Cartel.

18 Q. Juarez Cartel trial. How many times did
19 you testify in that?

20 A. Once.

21 Q. How many times have you testified in this
22 case?

23 A. A lot.

24 Q. Yeah, a lot. More than five times?

25 A. Yes.

1 Q. More than 10 times?

2 A. I don't know if it's more than 10, but I
3 probably have more than 40 hours on the stand
4 answering questions.

5 Q. And you have not been qualified as an
6 expert in the SNM Gang in this trial; isn't that
7 true?

8 A. That is true.

9 MS. TORRACO: Can I have just a moment,
10 Your Honor?

11 THE COURT: You may.

12 MS. TORRACO: Agent Acee, thank you very
13 much for your time.

14 THE COURT: Thank you, Ms. Torraco.

15 Mr. Burke, do you have cross-examination
16 on behalf of Mr. Troup?

17 MR. BURKE: I do.

18 THE COURT: Mr. Burke.

19 CROSS-EXAMINATION

20 BY MR. BURKE:

21 Q. Agent Acee, when were you actually sworn
22 in as a police officer with all of the authority and
23 power appurtenant thereto?

24 A. 2000.

25 Q. Then you worked with the California

1 Highway Patrol for about three and a half years?

2 A. No, sir. About five.

3 Q. Are you sure about that? Didn't you
4 graduate from the Academy in August of 2000?

5 A. I believe so. You're --

6 Q. Yeah. Then you actually started as a
7 sworn officer in February 2001? And then you went
8 to Vancouver in 2004; is that right?

9 A. I thought it was 2005, but I'd have to go
10 back and check.

11 Q. Okay. I'll bring that to your attention
12 later, because your resume says 2004. And then you
13 were with Vancouver until 2009; is that correct?

14 A. I think so, yes.

15 Q. And when did you apply to the FBI?

16 A. 2008.

17 Q. And then you were accepted a year later
18 and went to Quantico?

19 A. Yes, sir.

20 Q. Quantico is about six or seven months?

21 A. Yes, sir.

22 Q. Were you sworn as an FBI agent before or
23 after Quantico?

24 A. We're not FBI agents -- well, we're not
25 FBI agents until we graduate.

1 Q. Right. Okay. And then your first duty
2 station was Las Cruces?

3 A. Yes, sir.

4 Q. And when you were here in Las Cruces, did
5 you do cases such as false statements under 18001?

6 A. I don't think I've ever -- 18001? I don't
7 think I've ever done.

8 Q. Ever done a bank robbery case?

9 A. I've done one.

10 Q. Ever done a mail fraud case under 1341?

11 A. No, sir.

12 Q. How about a wire fraud case under 1343?

13 A. I've never -- I think we've charged that
14 once or twice.

15 Q. ITAR? Under Interstate Travel in Aid of
16 Racketeering, 1952? Have you ever done any of those
17 cases?

18 A. I've not done an ITAR case.

19 Q. And simple conspiracies under 18 United
20 States Code section 371, did you ever do any of
21 those?

22 A. Yes.

23 Q. And then you moved to Albuquerque when?

24 A. About four years ago.

25 Q. Okay. What year would that have been,

1 then?

2 A. Late 2014, I believe.

3 Q. Late 2014? How much after that did you
4 start your investigation into the SNM?

5 A. March of 2015.

6 Q. And as you said, you actually started your
7 investigation shortly before the letter of
8 declination from Burkhead; is that correct?

9 A. Yes, sir.

10 Q. And you were out at the PNM because you
11 were investigating the encroachment of some other
12 gang into New Mexico; is that correct?

13 A. Yes, sir.

14 Q. Was that the MA or the? Sureños, who was
15 that?

16 A. Both. But primarily the Sureños.

17 Q. And it would be a fair statement to say
18 that the MA are about a zillion times more organized
19 than the SNM, aren't they?

20 A. They've been around a little bit longer,
21 and they're probably a little bit more organized.

22 Q. Yes, sir. And then we've talked about the
23 letter of declination. When you were investigating
24 it the SNM in 2015, did anybody say to you, "You
25 know, it's a funny thing that you're investigating

1 the Castillo and Garza homicide, because that's
2 already been declined"? Did that happen in 2015?

3 A. No, sir.

4 Q. And then when the indictment came down on
5 Castillo and Garza, did anybody say, "Well, this
6 will show them, because we just indicted, even
7 though the head of the criminal division has
8 declined prosecution on these homicides"? Did that
9 happen?

10 A. No, and the same man approved it.

11 Q. And did he review all of your file? Was
12 he in on all of your meetings? Is that what
13 happened?

14 A. No, sir. He's not usually there.

15 Q. Right. Now, just for the record, my
16 client, Edward Troup, was not involved in any way in
17 the Marcantel/Santistevan plot, was he?

18 A. No, sir.

19 Q. But you did surveillance on him sometime
20 during 2015, didn't you? Did any of the members of
21 your task force do surveillance on Mr. Troup?

22 A. Not that I recall.

23 Q. So no one followed him to where he was
24 working from mid '14 till all the way through 2015
25 at Pace Iron Works and Star Paving? No one followed

1 him there?

2 A. They may have, but my case started in
3 March of 2015, and I don't recall tasking people
4 with that.

5 Q. He wasn't on your radar enough to have him
6 followed?

7 A. He was on my radar, but I don't recall
8 tasking anyone with following him around.

9 Q. During your investigation, did you learn
10 that Edward Troup was married in early 2015? Did
11 you find that out?

12 A. Not that I recall, no.

13 Q. Did you learn from checking the records of
14 the Social Security Division that he actually had
15 gotten a Social Security number and was still
16 working hard throughout those years?

17 MR. CASTELLANO: At this point I'm going
18 to object to defense counsel testifying.

19 THE COURT: I think you need to ask him
20 some foundational questions.

21 BY MR. BURKE:

22 Q. Did you check the Social Security files to
23 see if there were any records of Edward Troup?

24 A. I did not, no.

25 Q. All right. Did you check the driver's

1 license division to see if he had obtained a
2 driver's license?

3 A. I don't usually do that. I have analysts
4 that assist in putting targeting packets together.
5 They would have looked at those materials, but I did
6 not.

7 Q. Did you do anything to take a look at his
8 life to see that he had turned things around, sir?

9 MR. CASTELLANO: Same objection, Your
10 Honor.

11 MR. BURKE: He can answer that, Your
12 Honor.

13 THE COURT: I'll allow that question.

14 A. I believe that he was working. I believe
15 that he was still being arrested, too.

16 BY MR. BURKE:

17 Q. He was not being arrested in 2015, sir,
18 was he?

19 A. I'd need to check, because he did have
20 arrests around that timeframe.

21 Q. I know exactly when he was arrested, sir.
22 He was not arrested in 2015, was he?

23 MR. CASTELLANO: Same objection, Your
24 Honor.

25 THE COURT: Well, no, he can ask this

1 question. Overruled.

2 A. So in my head, I have over 100 of these
3 guys, and I don't know all their criminal histories.

4 BY MR. BURKE:

5 Q. I'm not asking about 100 other people.
6 I'm asking about my client.

7 A. My answer is: I would need to take some
8 time to look at that before I gave you a definitive
9 answer.

10 Q. Fine. No drug buys; right? Mr. Troup?

11 A. We didn't buy any drugs from him.

12 Q. No guns?

13 A. No.

14 Q. And when you had your colleagues arrest
15 him, did you know that you roused him out of his
16 marital bed?

17 A. I assume he was at home, and I know he was
18 arrested. I don't know where in his home he was.

19 Q. Placed him in custody?

20 A. We had arrest warrants for him.

21 Q. And he's been in custody since then?

22 A. He has.

23 Q. Let me ask you some questions about
24 Lorenzo Torres. You've read the question-and-answer
25 with him back in 2003, have you not?

1 A. Yes.

2 Q. And he made it real clear that he wanted
3 help with his parole in 2003; true? Yes or no?

4 A. I don't know.

5 Q. You don't remember that?

6 A. No.

7 Q. Do you remember that he was an FBI
8 informant in 2012?

9 A. No.

10 Q. Do you remember that you and your
11 colleague Agent Stemo reopened him as an informant
12 in 2017?

13 A. I know that Agent Stemo opened him in
14 2017. I just don't know if he was an informant
15 before then.

16 Q. So the answer to my question whether you
17 and Agent Stemo reopened him in 2017 is yes?

18 A. My answer is that Agent Stemo opened him
19 as an FBI informant in 2017.

20 Q. And the reason was that he was in the SNM
21 and he could provide you with information?

22 A. That's a good reason, yes.

23 Q. That's the reason in the paperwork, isn't
24 it? Would you like to see it?

25 A. Sure.

1 Q. Referring to discovery 43574.

2 A. Yes, sir. I see that.

3 Q. And he was scheduled to be and will be a
4 witness in this trial?

5 A. I believe he will.

6 Q. And even at that time, he was being
7 supervised by you, and there was Federal Prosecutor
8 Officer oversight Maria Armijo; is that correct?

9 A. Agent Stemo opened him, but I guess I'm
10 supervising that, yes.

11 Q. And there was also involvement from the
12 prosecutor's office, Ms. Maria Armijo?

13 A. Anytime -- yes. It's a yes-or-no answer.
14 Anytime someone is involved in a prosecution, we
15 note who the prosecutor is.

16 Q. And he was paid \$650 in 2017? Does that
17 sound right?

18 A. Yes, sir.

19 Q. Now, Agent Acee, you mentioned a code of
20 silence which was unbreakable, or something. But
21 I'd like to ask you a question. Did the code of
22 silence continue for Mario Montoya and Gerald
23 Archuleta?

24 A. I don't believe the code of silence is
25 unbreakable. I think we've shown that it's quite

1 breakable.

2 Q. Right. It's not much of a code of silence
3 with this group, is it?

4 A. It depends. I mean, I testified earlier
5 about Mr. Garcia, and he honored it.

6 Q. So Javier Alonso, Benjamin Clark --

7 MR. CASTLE: I'm going to object to that
8 statement, Your Honor. That's speculation on this
9 witness' part.

10 THE COURT: I'll strike that answer and
11 remind the jury that the defendants in criminal
12 cases always can remain silent. We talked about
13 that in voir dire. And it is not only true here in
14 the courtroom, as we talked about in voir dire, but
15 it's true out on the streets, too. So everybody has
16 a right to silence, and nothing adverse can be drawn
17 from it, and you can't use it in any way in these
18 proceedings. So we'll strike that statement and the
19 prior statements about someone not speaking to
20 Mr. Acee when they talk to him.

21 All right, Mr. Burke.

22 MR. BURKE: Thank you, Your Honor.

23 BY MR. BURKE:

24 Q. Javier Alonso, Benjamin Clark, Billy
25 Cordova, Ruben Hernandez. They had no trouble

1 ignoring the code of silence, did they?

2 A. No.

3 Q. Leonard Lujan, Eugene Martinez, Robert
4 Martinez, Roy Martinez, Timothy Martinez. They had
5 no trouble ignoring the code of silence, did they?

6 A. No.

7 Q. Jake Armijo, Frederico Munoz, Paul Rivera,
8 Phillip Gonzalez, Sammy Griego, John Montano, Fred
9 Quintana, Mario Rodriguez, Lawrence Torres, Robert
10 Lovato, Leroy Lucero. Those are the ones who had no
11 trouble ignoring the code of silence for this trial;
12 correct?

13 A. They all talked.

14 Q. And this list for this trial is, what,
15 half, a third of the people you've gotten to talk?

16 A. Probably even less than that.

17 MR. BURKE: That's all I got.

18 THE COURT: Thank you, Mr. Burke.

19 All right. Mr. Castellano, do you have
20 redirect of Mr. Acee?

21 MR. CASTELLANO: Yes, Your Honor.

22 THE COURT: Mr. Castellano.

23 REDIRECT EXAMINATION

24 BY MR. CASTELLANO:

25 Q. Let's start with the code of silence,

1 Agent Acee. Is it quite accurate to say that people
2 didn't have trouble breaking that code of silence?

3 A. Some men did not.

4 Q. For example, someone like Billy Cordova?
5 Has he struggled with the code of silence even as
6 he's continued to cooperate?

7 A. Yes.

8 Q. And has he expressed that even in court?

9 A. Yes.

10 Q. And so even as someone who is cooperating,
11 has he expressed even mixed emotions about
12 cooperating?

13 MR. CASTLE: Objection, hearsay.

14 THE COURT: Sustained.

15 BY MR. CASTELLANO:

16 Q. I'll just go back to the original
17 question. Is it quite accurate to say that people
18 have had an easy time breaking the code of silence?

19 A. Some men have not.

20 MR. CASTLE: Objection, Your Honor.
21 That's speculation.

22 THE COURT: If he's got some foundation to
23 it, he can answer that question. Overruled.

24 BY MR. CASTELLANO:

25 Q. Go ahead.

1 A. Some of the men have struggled with that.

2 Q. And is part of the struggle also because
3 there are consequences with this gang, breaking the
4 code of silence?

5 MR. BENJAMIN: Objection. Withdrawn.

6 A. Yes.

7 Q. And is that what part of this case is even
8 about, in terms of people cooperating with law
9 enforcement and suffering the consequences?

10 A. Yes.

11 Q. Is that part of the Government's theory
12 about why some of the men in these cases have been
13 killed?

14 A. Yes.

15 MS. TORRACO: Objection. Sorry.

16 THE COURT: Overruled, if that was an
17 objection.

18 BY MR. CASTELLANO:

19 Q. Since I have it in front of me, let's talk
20 about the recording for just a minute. Agent Acee,
21 I'm going to show you Defendants' Exhibit AL. This
22 is the memorandum regarding recording of statements.
23 Are you familiar with that?

24 A. Yes.

25 Q. I don't know if defense counsel just

1 missed it.

2 MR. CASTLE: Objection, Your Honor, to the
3 comment.

4 THE COURT: Let's not comment on it. Just
5 ask a question.

6 BY MR. CASTELLANO:

7 Q. Let's talk about the timing on page 2,
8 paragraph E, and when this policy applies. Do you
9 see that, Agent Acee?

10 A. I do.

11 Q. It applies to persons in custody in a
12 place of detention with suitable recording equipment
13 following arrests but have not yet made an initial
14 appearance before a judicial officer under Federal
15 Rule of Criminal Procedure 5.

16 A. I'm familiar with this policy.

17 Q. Did you follow this policy in this case?

18 A. Yes.

19 Q. In other words, when these men and all
20 others were arrested in this case, when they were
21 first arrested but before they were first presented
22 to any court on the charges, was this policy
23 followed?

24 A. Yes.

25 Q. And is that what this policy talks about?

1 A. Yes.

2 Q. So does this policy talk about -- I mean,
3 do you have an option to record, if you want to?

4 A. Yes, if there's no other limitations, like
5 attorney objections or the person doesn't want to.

6 Q. In terms of what this policy actually
7 applies to, is that what it applies to?

8 A. It just applies to after we arrest
9 somebody and before they are brought to court.

10 Q. So once they're brought to court, are they
11 in your custody anymore?

12 A. They are not.

13 Q. Whose custody are they in?

14 A. In the custody of the United States
15 Marshal Service.

16 Q. And for those in the Corrections
17 Department, are they in Corrections Department
18 custody?

19 A. Yes.

20 Q. I'm showing you Defendants' Exhibit Q3.
21 And this is what the defense has referred to as the
22 declination letter in March, March 26, 2015. Do you
23 see that?

24 A. Yes, sir.

25 Q. Did you know anything about this letter

1 when you started this investigation?

2 A. No.

3 Q. And Jack Burkhead here is the criminal
4 chief, meaning he's basically the boss of the
5 criminal division in the U.S. Attorney's Office.

6 A. Yes, sir.

7 Q. And after you finished investigating this
8 case, starting also in March of 2015, presenting
9 charges in December of 2015 for an indictment, did
10 Mr. Burkhead approve the charges?

11 MR. CASTLE: Objection, hearsay.

12 THE COURT: I think you offering it would
13 be. Sustained.

14 MR. CASTELLANO: I think he answered that
15 question on cross-examination.

16 THE COURT: Well, I think the defendants
17 can elicit it, but you can't.

18 BY MR. CASTELLANO:

19 Q. Regardless, did this case move forward to
20 a prosecution in December of 2015, including the
21 Castillo and Garza murders?

22 A. Yes.

23 Q. Including murders in which Leonard Lujan
24 is a witness?

25 A. Yes.

1 Q. Is it fair to say that the U.S. Attorney's
2 Office in March of 2015 declined prosecution, but
3 then nine months later agreed to move forward with a
4 prosecution of these charges?

5 MR. CASTLE: Objection.

6 MS. TORRACO: Objection.

7 THE COURT: I'm going to sustain these
8 objections.

9 BY MR. CASTELLANO:

10 Q. In other words, are these men facing
11 charges for that same conduct?

12 A. Yes.

13 Q. Leonard Lujan -- this is the person;
14 correct?

15 A. Yes.

16 Q. And you were also asked about whether or
17 not some of the cooperators in this case were
18 presented to the grand jury, but at the time this
19 case was presented, were they not defendants?

20 A. They were.

21 Q. So would you have presented these
22 defendants at that time to the grand jury?

23 A. We did not.

24 Q. And once again, when Mr. Lujan gave the
25 statement, did he also implicate himself in those

1 murders?

2 A. Yes.

3 Q. Was he charged with those murders?

4 A. Yes.

5 Q. I'm not going to ask you what these people
6 are saying. Okay? I just want to ask you whether
7 Manuel Jacob Armijo, who was charged in April of
8 2016, has information about the Castillo murder in
9 conversations with Billy Garcia.

10 MR. BENJAMIN: Objection.

11 THE COURT: Sustained.

12 MR. CASTELLANO: I'm not asking for the
13 statements.

14 THE COURT: That's too close to being the
15 statement. So sustained.

16 BY MR. CASTELLANO:

17 Q. Do you expect him to testify in this case?

18 A. Yes.

19 Q. And when this case was first presented,
20 did you know he would be a cooperating defendant?

21 A. No.

22 Q. So has the evidence, even as this case
23 progressed, changed by the plea of certain
24 individuals?

25 A. Yes.

1 Q. Same question of Eugene Martinez. Since
2 this case has been charged, has he agreed to
3 cooperate regarding the Castillo and Garza murders?

4 A. Yes.

5 Q. Robert Martinez, Baby Rob. Has he agreed
6 to cooperate?

7 A. Yes.

8 Q. Regardless of what anyone says, is it
9 ultimately for this jury to decide whether these men
10 will be telling the truth in court?

11 A. It's up to the jurors.

12 Q. The same with Mario Rodriguez?

13 A. Yes.

14 Q. Timothy Martinez?

15 A. Yes.

16 Q. Ruben Hernandez?

17 A. Him, too.

18 Q. Including information about the Freddie
19 Sanchez murder?

20 A. Yes.

21 Q. Javier Alonso?

22 A. Yes.

23 Q. If I can get a better picture here, I
24 don't know if you can see the number 19 on his
25 cheek.

1 A. I'm familiar with it. It's on his right
2 cheek.

3 Q. Is that the number you said was affiliated
4 with the 19th letter of the alphabet, which is S?

5 A. Yes, sir.

6 Q. Benjamin Clark?

7 A. Yes.

8 Q. Frederico Munoz?

9 A. Yes.

10 Q. Who himself is a two-time murderer;
11 correct?

12 A. Yes.

13 Q. Gerald Archuleta?

14 A. Yes.

15 Q. Going back to Gerald Archuleta, defense
16 counsel asked you if he was going to be facing a
17 number of charges, so I want to distinguish between
18 a number of overt acts versus a number of charges.
19 If he was going to be charged, would it have been
20 one count of what's called a RICO conspiracy?

21 A. Yes.

22 Q. And were you putting together what are
23 called overt acts which show the ways he conspired
24 to violate the RICO statute?

25 A. Yes, sir.

1 Q. So in terms of breaking up this gang, for
2 you, what was the significance of someone like
3 Gerald Archuleta, also known as Styx, becoming a
4 cooperator against the gang?

5 A. I think it's devastating. It was well
6 regarded. He's a leader. He wore a wire against
7 his own guys.

8 Q. In addition to just cooperating and maybe
9 pleading to the only charge against him at the time,
10 three years, did you have other plans in mind for
11 him in terms of having this cooperation impact the
12 organization?

13 A. Yes.

14 Q. Roy Martinez, same thing?

15 A. Yes.

16 Q. Also a two-time murderer?

17 A. I was pausing because I thought there
18 could have been a third. But two, yes.

19 Q. So as I said, it ultimately will be up to
20 the jury to make the decisions about their
21 credibility; is that correct?

22 A. Yes, sir.

23 Q. Defense counsel also asked about what
24 everyone refers to as a 5K, the ability to reduce
25 their sentence. And so if the United States does

1 not file a 5K on their behalf, for someone facing a
2 life sentence is there any reduction in the
3 sentence?

4 A. No.

5 Q. And even if the United States files a
6 motion on their behalf, is it ultimately up to the
7 judge to make that sentencing decision?

8 A. Yes, sir.

9 Q. For those who have pled guilty to murder,
10 what are they currently facing in terms of a
11 sentence?

12 A. Life in prison.

13 Q. So for anyone who pled guilty to murder,
14 they're basically working their way down from life?

15 A. Yes.

16 Q. Do any of these charges, even if there's a
17 5K, include any dismissal of the charges against
18 these cooperators?

19 A. No.

20 Q. So even if it went very well for any of
21 them, do you expect any charges to be dismissed?

22 MR. BENJAMIN: Objection, Your Honor.

23 Facts not supported by the evidence.

24 MS. TORRACO: And objection, Your Honor.

25 I don't know that he can make that decision. That

1 would be the U.S. Attorney's decision or the Court's
2 decision.

3 THE COURT: Well, I just think that it's
4 speculative to talk about that. So I'll sustain the
5 objection.

6 BY MR. CASTELLANO:

7 Q. Are you aware of any such agreements?

8 A. I am not.

9 Q. Mr. Solis kind of walked around the
10 courtroom to give the jury an idea of the size of
11 the pods. Do you remember that?

12 A. Yes.

13 Q. And is it your understanding that the jury
14 will actually get photographs of some of the pods so
15 they can see with their own eyes?

16 A. Yes.

17 Q. Would you describe them as a fairly small
18 living environment?

19 A. Yes.

20 Q. And if you recall, approximately how many
21 inmates typically live in a pod, the pods you have
22 seen?

23 A. It's different at each facility. But --
24 and I spend much more time at PNM. But from what I
25 recall at Southern, I think it's eight cells on the

1 bottom and a matching eight cells on the second
2 floor.

3 Q. Do you know how easy or difficult it is to
4 keep secrets in a pod that size if only SNM Gang
5 members are living in a pod that size?

6 MR. BENJAMIN: Objection.

7 MR. SOLIS: Objection.

8 MR. BURKE: Objection.

9 MR. CASTELLANO: I asked if he knew.

10 THE COURT: Sustained.

11 BY MR. CASTELLANO:

12 Q. A number of the attorneys have asked you
13 if there are any drug buys against or from their
14 defendants. Where are the drug buys largely
15 focused?

16 A. Albuquerque.

17 Q. Why was that?

18 A. Because Marcantel and Santistevan lived
19 there.

20 Q. So the point -- you were making drug buys
21 and things of that nature, were you largely focusing
22 on once again mitigating that threat?

23 A. Yes, sir.

24 Q. For people like Robert Martinez, who was
25 once a leader in the gang, once again, did he check

1 out of the gang even before he was charged in this
2 case?

3 A. Yes, he did.

4 Q. Once again, just to be clear regarding the
5 payments, when you sign people up as confidential
6 human sources, were you paying for testimony?

7 A. No.

8 Q. Did you give them money for information
9 they had provided?

10 A. Yes.

11 Q. Now, for many of those people, once again,
12 did the payments stop if they broke the rules?

13 A. Yes.

14 Q. So going to Billy Cordova, you were asked
15 about whether or not he had sex with his wife in
16 the -- during a contact visit. Do you remember
17 that?

18 A. Yes.

19 Q. And have you seen the video?

20 A. I have.

21 Q. In the video, are you able to see whether
22 or not there is any nudity?

23 A. No, there is no nudity. They're covered
24 up.

25 Q. But are the children in the room at least

1 on two occasions?

2 A. Yes, they're across the table. There is a
3 Monopoly board in between them. They look like
4 they're playing Monopoly.

5 Q. And as a result of that conduct, was he
6 investigated by State Police as well as possibly
7 CYFD?

8 A. We made referrals to both, yes.

9 Q. Under those circumstances, were you making
10 sure he was held accountable for that conduct?

11 A. Yes.

12 MR. BENJAMIN: Objection, Your Honor.

13 THE COURT: Overruled.

14 BY MR. CASTELLANO:

15 Q. And once again, as a result of that
16 misconduct, was he no longer paid money by the FBI?

17 A. Among other things, yes.

18 Q. And even after he was closed as an
19 informant, did he agree to record someone else in
20 prison?

21 A. Yes.

22 Q. Now, you were asked about statements he
23 made about previously testifying about not having
24 used drugs, under oath. Do you remember that?

25 A. Yes.

1 Q. And you said there is a question about
2 whether he understood the question?

3 A. There was, yes.

4 Q. And do you recall whether or not the
5 defense attorneys knew about that because he
6 actually disclosed his drug use after he had
7 testified?

8 A. Yes.

9 Q. Do you recall him being apologetic about
10 that during a break?

11 A. Yes.

12 MR. BENJAMIN: Objection, Your Honor, to
13 the characterization of things outside the record.

14 MR. CASTLE: And it's hearsay.

15 THE COURT: Let's move on. That's a
16 statement out-of-court, if it was on the break.
17 Sustained.

18 BY MR. CASTELLANO:

19 Q. You were asked about total payments in
20 this case of -- I don't know -- maybe \$80,000,
21 \$90,000. Did some of those larger amounts just go
22 to a few individuals?

23 A. Yes.

24 Q. So for Eric Duran, for example?

25 A. Yes.

1 Q. Approximately how much money did he
2 receive?

3 A. I think around 50 total with relocation of
4 him and his family.

5 Q. Why were they relocated?

6 A. For their safety.

7 Q. And is that because Eric Duran also
8 recorded SNM Gang members in a prison facility?

9 A. Yes, to include the leader.

10 Q. So under those circumstances, then, did
11 you provide money to move him and his family out of
12 state?

13 A. Yes.

14 Q. And was he possibly the first person to
15 notify law enforcement about the murder conspiracies
16 of the Secretary of the Department of Corrections
17 and Mr. Santistevan?

18 MS. TORRACO: Objection.

19 MR. CASTLE: Objection, hearsay.
20 Irrelevant.

21 MR. CASTELLANO: The payments were asked
22 about, Your Honor.

23 THE COURT: Well, but I think that is
24 different question. Sustained.

25

1 BY MR. CASTELLANO:

2 Q. I want to ask you the same question about
3 Mario Montoya. Did he also receive more money than
4 some of the other people who cooperated?

5 A. Yes.

6 Q. And was he also somebody who recorded
7 other SNM Gang members?

8 A. Yes.

9 Q. And was that in relation to the
10 Santistevan and Marcantel conspiracies?

11 A. Yes.

12 Q. And did you pay him so he and his family
13 could move out of state?

14 A. Yes.

15 Q. You also mentioned paying for a trade
16 school. Was that so that once he got out, he should
17 plan on supporting himself with a trade?

18 A. Yes.

19 Q. The defense has asked you questions about
20 Leroy Lucero. Do you remember that?

21 A. Yes.

22 Q. And was he somebody who was in prison
23 close in time to the Castillo and Garza murders in
24 2001?

25 A. He was.

1 Q. I think defense counsel asked you whether
2 he actually left prison probably around three days
3 before that time.

4 A. Yes.

5 Q. And has he talked to you about the
6 circumstances surrounding -- once again, don't tell
7 us what he said. But has he talked to you about the
8 circumstances surrounding kind of the events leading
9 up to those murders?

10 A. Yes.

11 Q. Do you expect for him to tell the jury, as
12 well, about those circumstances?

13 A. I do.

14 Q. You also -- once again, I don't want an
15 answer about what you expect to be said, but do you
16 expect for him to tell the jury who was in charge of
17 the facility when he left?

18 A. Yes.

19 Q. You were asked about this questionnaire
20 that you use to question people about the SNM Gang.
21 Do you remember that?

22 A. I do.

23 Q. And one of the questions that was asked of
24 you was a question about the people allegedly
25 involved with the Castillo murder. Do you remember

1 that?

2 A. Yes.

3 Q. You listed people's names.

4 A. Yes, I did.

5 Q. So when you put that into the
6 questionnaire, were you basing that on your
7 investigation at that time, at that date?

8 A. Yes, as well as the indictments.

9 Q. And even when you had specific names, did
10 you sometimes get answers from people that they
11 didn't know or didn't have information about?

12 A. Yes.

13 Q. So even though you gave them the names, is
14 it fair to say people still responded with "I don't
15 know or have information"?

16 A. Correct.

17 Q. Jake Armijo. You were asked about a
18 recent \$500 payment to him. Do you remember that?

19 A. Yes.

20 Q. Before that recent payment, had you paid
21 him anything?

22 A. No.

23 Q. And in his case, what was the \$500 for?

24 A. Surveillance cameras at his house.

25 Q. Was that something you paid him after he

1 had testified in certain proceedings regarding the
2 SNM?

3 A. Yes.

4 MR. CASTLE: Your Honor, I think the Court
5 was going to do an instruction, and I think this
6 would be the appropriate time concerning other
7 proceedings.

8 THE COURT: Do you have the document?

9 MR. CASTELLANO: I do, Your Honor. May we
10 approach regarding that? I have an objection to the
11 instruction.

12 THE COURT: Mr. Sindel, why don't you come
13 up.

14 (The following proceedings were held at
15 the bench.)

16 THE COURT: Why don't you let Mr. Sindel
17 in there since he's in on this?

18 What's your objection? Do you need to see
19 that?

20 MR. SINDEL: I left it at the desk.

21 THE COURT: He's going to object to it.

22 MR. SINDEL: He should be ashamed of
23 himself.

24 MR. CASTELLANO: The objection is, I'm not
25 convinced that guilty verdicts in a prior trial of

1 SNM Gang members are not relevant to these
2 proceedings, because those are now established facts
3 now under reasonable doubt. So in other words, the
4 jury is not bound by another jury's decision, but it
5 is a fact that they can determine -- use to
6 determine whether or not the enterprise engaged in
7 racketeering activity. I don't have the case,
8 because I wasn't sure this instruction would come
9 up. I do have a case about a person was previously
10 convicted of a crime kind of like Mr. Baca in the
11 last trial. There is case law that says we could
12 introduce his prior conviction regarding that murder
13 and the jury would be instructed that they're not
14 bound to accept it, but it is a fact that they could
15 consider in considering whether or not he was
16 engaged in racketeering activity. And I think this
17 is similar. And I'll look for the case if I need
18 to, but this is a similar set of circumstances in
19 that none of those facts were established beyond a
20 reasonable doubt. I do believe the jury can find
21 those to be facts in determining whether certain
22 racketeering elements have been met, including that
23 the enterprise engaged in racketeering activity.

24 THE COURT: Let me cross that bridge when
25 I get there. Show me the case and educate me. But

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1 right at the moment, I'm not sure that I see the
2 relevance. I think the facts are going to have to
3 be proved in this case to this jury's satisfaction,
4 just like I'm keeping out the magistrate judge's
5 determination of no probable cause. I might even --
6 if I see the case, if it's binding authority, I'll
7 have to follow it. But I'm a little bit concerned
8 about taking others just right now and appropriating
9 into this case. If I have to reconsider it, I'll
10 look at it down the road, but I think as we close
11 this evening, I'd rather give this limiting
12 instruction and leave it there. If I have to redo
13 it, I'll do it at that point.

14 MR. CASTELLANO: Understood, Your Honor.

15 THE COURT: Probably we're at a point --
16 did you want to finish him up today?

17 MR. CASTELLANO: I still have some more,
18 Your Honor. We won't finish him in the next few
19 minutes.

20 THE COURT: I'll let you get a little bit
21 more. We'll get him in the shape that we'll run it
22 to the end, even on Friday I'll come back. I'll
23 give this limiting instruction.

24 (The following proceedings were held in
25 open court.)

1 THE COURT: Yesterday Agent Acee referred
2 to members of the SNM who, in a separate trial, were
3 convicted of offenses legally similar to the
4 offenses charged against these defendants. You
5 should also know that not all defendants in that
6 trial were convicted. That proceeding involved
7 different defendants and different alleged criminal
8 activity than those in these proceedings.

9 You are instructed that Agent Acee's
10 testimony cannot be considered in determining the
11 guilt of any of the defendants in the case before
12 you. So his testimony about the other trial cannot
13 be considered in determining the guilt of any of the
14 defendants in the case before you.

15 All right. Mr. Castellano.

16 MR. CASTELLANO: Thank you, Your Honor.

17 BY MR. CASTELLANO:

18 Q. So going back to recording of statements
19 of people, one of the questions you were asked was
20 whether you could just put a recording device into a
21 pod where the cooperators were living. What would
22 be the problems for you doing that?

23 A. One, they're represented, so they have
24 attorneys. The second is, anytime we attempt to
25 introduce a recording device into a facility where

1 there are federal inmates, we have to get high-level
2 authorizations from the Department of Justice in
3 Washington, D.C. There are a host of problems.
4 Those are the two most significant.

5 Q. Same question. Even if these defendants
6 are represented by attorneys and have a relationship
7 with them, could you basically put a bug in their
8 cell and spy on them? Would that be proper?

9 A. No.

10 Q. When it comes to recording people, what's
11 been your experience about whether -- reasons why
12 people don't want to be recorded?

13 A. A lot of the people I've interviewed over
14 the years are comfortable giving me a statement, but
15 they feel like they're taking an extra step when I
16 put a tape recorder out or I record their statement.
17 So a lot of people don't like that.

18 Q. You were also asked about the tablets and
19 people who tampered with them. Is it fair to say
20 that some of those people did agree to have their
21 tablets inspected?

22 A. Yes.

23 Q. And did some of those, through their
24 attorneys, give the passwords over to law
25 enforcement?

1 A. Yes.

2 Q. Now, do you remember that situation with
3 the tablets?

4 A. I do.

5 Q. And do you remember it taking a number of
6 months before that got sorted out because of the
7 protective order that was in place?

8 A. Yes.

9 Q. So with an order in place that protected
10 the tablets, without another order of the Court,
11 were you just able to seize those and start
12 searching them?

13 A. No, I'd be violating --

14 MR. BENJAMIN: Objection, Your Honor. I
15 think that calls for a misleading answer.

16 THE COURT: Well, if that's his opinion as
17 to what his situation was and explains why he did
18 it, I'll allow him to testify why he didn't do it.

19 A. I or the other agents didn't take those
20 because there was a court order that -- there was
21 court order regulating those devices, and they
22 belonged to defendants that had attorneys, and I
23 wanted to be very cautious in violating either the
24 Court's order or the attorney-client privilege.

25

1 BY MR. CASTELLANO:

2 Q. So ultimately, did you agree to turn those
3 tablets over to a defense forensic expert so the
4 defense teams could have their expert look at those
5 tablets?

6 A. Yes.

7 Q. And did that, in fact, happen?

8 A. It did.

9 THE COURT: Mr. Castellano, would this be
10 a good point for us to take our recess for the
11 evening?

12 MR. CASTELLANO: Yes, Your Honor.

13 THE COURT: All right. We're about to
14 take our first weekend break during the trial, so
15 I'm going to remind you of a few things that are
16 especially important.

17 Until the trial is completed, you're not
18 to discuss the case with anyone, whether it's
19 members of your family, people involved in the
20 trial, or anyone else. And that includes your
21 fellow jurors. If anyone approaches and tries to
22 discuss the trial with you, please let me know about
23 it immediately.

24 Also you must not read or listen to any
25 news reports of the trial. Again, don't get on the

1 internet and do any research for purposes of this
2 case.

3 And finally, remember you must not talk
4 about anything with any person involved in the
5 trial, even if it doesn't have anything to do with
6 the trial. If you need to speak with me, simply
7 give a note to one of the court security officers,
8 Ms. Bevel.

9 Probably I'm done with these for a while.
10 So keep them in mind. You've heard them enough.
11 You've probably memorized them and could say them
12 back to me by now. But do keep them in mind next
13 week.

14 I know y'all will be traveling, some of
15 you tonight, some of you tomorrow. Be safe on your
16 travels. We'll have you back in the jury room at
17 8:30 on Monday morning. My wife wants to go see a
18 movie tonight, so I think I'm staying here and
19 driving back to Albuquerque in the morning. She
20 wants to go see Chappaquiddick. It starts about
21 7:15 or 7:30. I don't know if I'm going to be awake
22 by the time it's over.

23 Y'all be safe in your travels. Thank you
24 for the way you've gone about your task. You're a
25 great bunch. Be safe.

1 All rise.

2 (The jury left the courtroom.)

3 THE COURT: A couple of quick things so we
4 can get out of here. Ms. Armijo, would you send me
5 an email and respond to Ms. Torracco's motion and
6 tell me, so I can maybe look over those exhibits
7 over the weekend, and decide whether they're in or
8 out? Or have y'all talked?

9 MS. ARMIJO: Your Honor, we haven't talked
10 yet. Maybe we can have an opportunity to talk and
11 get it to you. I don't see that coming up --

12 THE COURT: I don't want to start doing my
13 review if it's not necessary. And if it is
14 necessary, I want to be ready for it.

15 MS. ARMIJO: Let us talk.

16 THE COURT: So keep me in mind, so I don't
17 get caught shorthanded, because there's a lot of
18 exhibits.

19 And Mr. Sindel, I'm not going to argue it,
20 but can you just give me your two pages there, and I
21 can probably figure out what your issue is, so I'm
22 ready for that? Can you give it to me and I'll make
23 a copy and hand it back to you?

24 MR. SINDEL: Fine.

25 MR. CASTLE: Can we make a quick record?

1 THE COURT: How quick?

2 MR. CASTLE: Less than two minutes.

3 THE COURT: Let's do it on Monday morning.

4 Do you need this thing tonight, Ms. Armijo? Do you
5 need this? You've got two-thirds of it. Can it
6 wait till Monday?

7 MS. ARMIJO: We're missing the most
8 important part, the third, just because it involves
9 someone that's in trial now.

10 THE COURT: When are you going to need it,
11 though?

12 MS. ARMIJO: It depends on what it is and
13 if we are going to use it now. We don't know what
14 it is.

15 THE COURT: Let's take it up Monday
16 morning. I don't think it's urgent.

17 Okay, guys. I appreciate your hard work.
18 Be safe. See you Monday morning, 8:30.

19 (The Court stood in recess.)
20
21
22
23
24
25

1 April 16, 2018

2

3 THE COURT: All right. Good morning,
4 everyone. I appreciate everybody being here and on
5 time and ready to go. It looks like every defendant
6 is in the room and has a lawyer. And I think the
7 jury was here about 10 after.

8 I got a stack of motions over the weekend
9 that I got this morning. One of them related
10 specifically to Mario Rodriguez. When does the
11 Government intend to call him, so that I know how to
12 kind of schedule my time of reading these and
13 working on some of these issues?

14 MS. ARMIJO: So after Special Agent Acee,
15 we have Jerry Roark, and then Mario Rodriguez.

16 THE COURT: So it could be today?

17 MS. ARMIJO: It could be today. I
18 anticipate it to be today, late morning at the
19 earliest. But I think that we'll at least -- have
20 at least another break.

21 THE COURT: All right. I'll try to put
22 that one to the front, unless somebody has got some
23 other issue that's more pressing than that.
24 Anything we need to discuss before we bring the jury
25 in? Anything I can do for you? Ms. Armijo? Mr.

1 Castellano?

2 MS. ARMIJO: No, Your Honor.

3 Mr. Castellano may.

4 THE COURT: How about from the defendants?

5 Mr. Blackburn was up first. Let me get him.

6 Mr. Blackburn.

7 MR. BLACKBURN: Your Honor, I'm just
8 assuming that we don't have to continue to make
9 objections. We made our objections for the record
10 that relates to the co-conspirator hearsay
11 statements or issues that came out of the James
12 hearing, so we don't have to repeatedly do that.
13 For the record I would object to, you know, based
14 upon our previous -- a group of all the defendants'
15 requests concerning -- the Court to exclude some of
16 the James statements, so we don't have to do that on
17 every occasion?

18 THE COURT: Yeah, if my chart -- I'll try
19 to get a completed opinion out to you, but if the
20 chart has a ruling on it, then you don't have to
21 renew that. If for some reason you think, you know,
22 something is different than what is occurring, I
23 mean some of that, it's not playing out the way that
24 I say in that box, then you're welcome to approach.
25 But I think you've reserved your error -- preserved

1 your objection on those issues. If there is
2 something new, help me out, because it's a lot of
3 statements for me to keep track of. I'm doing the
4 best I can, but don't hesitate to say that's a new
5 statement, and --

6 MR. BLACKBURN: You never know what the
7 Tenth Circuit is going to decide as to whether or
8 not we preserved.

9 THE COURT: I understand. No, I
10 understand what you're doing.

11 All right. Mr. Sindel.

12 MR. SINDEL: Very briefly. I did talk to
13 Ms. Armijo on Friday in anticipation of Mr.
14 Rodriguez' testimony. I've asked her to instruct
15 him not to refer to any previous testimony as being
16 at a first trial. I think that would confuse the
17 jury as to whether or not these defendants have been
18 on trial before, and I've asked her to, you know,
19 ask him to refer to it as previous sworn statement.

20 THE COURT: All right. Is that agreeable,
21 Ms. Armijo?

22 MS. ARMIJO: Yes, Your Honor. And I met
23 with him this weekend and informed him of that, and
24 so he is aware that -- to say "prior testimony."

25 THE COURT: All right. And if you get to

1 any point that might be tricky for him or something,
2 you might think about leading him through that so
3 that he might not have to characterize it himself.

4 All right. Anything else from the
5 defendants?

6 Ms. Bevel, do you want to go ahead and
7 line them up and get them ready to go?

8 THE CLERK: Sure.

9 THE COURT: While she's lining them up,
10 was there something we were going to do, Mr. Castle,
11 about that document? I think you wanted to say
12 something.

13 MR. CASTLE: Yes. The document is not
14 here, and it will be here shortly. Could we take it
15 up at a different time?

16 THE COURT: Sure. You were going to make
17 some statement about it. Do you know what that was?

18 MR. CASTLE: I wanted to do it ex parte
19 because it deals with whether it's work product or
20 not.

21 THE COURT: Any problem with me hearing
22 that argument ex parte?

23 MS. ARMIJO: Is this in reference to the
24 search, Your Honor?

25 THE COURT: Yeah, the document that is

1 Mr. Billy Garcia's document. He wants to make some
2 argument on it being work product.

3 MS. ARMIJO: I believe we had previously
4 agreed to that.

5 THE COURT: Was there one sort of hanging
6 issue on Friday when we were trying to get out of
7 here? Okay, is there any -- I'll move Mario
8 Rodriguez', Mr. Blackburn's motion on that to the
9 top. Is there anything that's burning that I need
10 to be working on and thinking about? I'm working on
11 the PSR issues, trying to figure out what to do on
12 it.

13 All right. All rise.

14 (The jury entered the courtroom.)

15 THE COURT: Good morning, ladies and
16 gentlemen. Ms. Bevel told me y'all were back in at
17 8:10 and ready to go. I really appreciate everyone
18 being here and ready to go. I appreciate the
19 attorneys and parties being ready to go. I hope you
20 had a good weekend, safe travels. I got in about
21 12:30, had some Rudy's for breakfast on the way out
22 on Saturday, and got back in last night and ate at
23 the Cattle Baron. So I'm getting to eat at all the
24 restaurants here in Las Cruces.

25 We went to see -- I think I told you we

1 had two bags of popcorn and watched "Chappaquiddick"
2 on Friday night. It was a made-for-television level
3 movie. It was kind of interesting. It shows you,
4 though, where you are on the age spectrum. I asked
5 my clerks if they knew what Chappaquiddick even
6 meant, and one of them did not. If you know about
7 Chappaquiddick, you're of a certain age; and if you
8 don't, you're a different age.

9 Thank you for being back on time. Thank
10 you for all you're doing for us, and I hope you had
11 a good weekend, too.

12 All right. Mr. Acee, I'll remind you that
13 you're still under oath.

14 Mr. Castellano, if you wish to continue
15 your redirect of Mr. Acee, you may do so at this
16 time.

17 MR. CASTELLANO: Yes, sir. Thank you.

18 THE COURT: Mr. Castellano.

19 BRYAN ACEE,
20 after having been previously duly sworn under
21 oath, was questioned, and continued testifying
22 as follows:

23 CONTINUED REDIRECT EXAMINATION

24 BY MR. CASTELLANO:

25 Q. Good morning, Agent Acee.

1 A. Good morning.

2 Q. I think when we left off on Friday, we
3 were talking about the tablets that the defendants
4 have that have discovery on them. Do you remember
5 that?

6 A. Yes.

7 Q. So even the cooperators, when they were
8 defendants, before they agreed to cooperate -- did
9 they have tablets also?

10 A. Yes.

11 Q. And were they entitled to have the
12 discovery because they were also accused in this
13 case?

14 A. Yes, sir.

15 Q. Now, defense counsel asked about whether
16 or not they had access to statements when they had
17 their tablets. Do you remember that?

18 A. Yes.

19 Q. Now, kind of the flipside of that is: If
20 the statements are on there, does that mean that the
21 defendants in this case also have statements of
22 anyone who is cooperating?

23 A. Yes.

24 Q. In other words, they would have access to
25 know who was cooperating against them in this case?

1 A. That's right.

2 Q. There is a question about the misuse of
3 the tablets and people using the tablets to see
4 pornography. Do you recall that?

5 A. Yes.

6 Q. There was a question about one in
7 particular, Jerry Armenta.

8 A. I recall.

9 Q. Can you tell the jury whether or not any
10 child pornography was recovered from his tablet?

11 A. No, there was no child pornography
12 recovered.

13 Q. To be fair, was there an indication that
14 he had tried to access teenage pornography?

15 A. Yes.

16 Q. Once again, going back to the search of
17 the tablets, before even the FBI search, did the FBI
18 coordinate to get those tablets to a defense expert
19 so that expert could see it even before the
20 Government?

21 A. Yes.

22 Q. Is that for each of the tablets that was
23 examined?

24 A. Yes.

25 Q. You were also asked about a cooperator

1 pod. Do you remember that?

2 A. Yes.

3 Q. And what was the purpose of having
4 cooperators in a pod? When we say "a pod," is that
5 a pod or living area in a correctional facility?

6 A. Yes, a pod is like a dormitory, for lack
7 of a better word, that has a bunch of rooms in it,
8 or cells. And there was a cooperator pod at the
9 Penitentiary of New Mexico up in Santa Fe, and the
10 purpose was to keep the cooperators safe in one
11 location.

12 Q. All right. So you said "keep them safe."
13 Safe from who?

14 A. The defendants and anyone else that didn't
15 agree with them cooperating.

16 Q. So would it have been a good idea to put
17 cooperators with those who were accused of --
18 continuing to be accused of crimes?

19 A. No.

20 Q. So how many choices do you have really to
21 put cooperators who are in confinement in certain
22 locations?

23 A. Well, we're limited because New Mexico
24 only has so many facilities that will hold federal
25 defendants. And that one -- in this case, PNM

1 seemed to be the most secure and the best choice for
2 us at the time.

3 Q. And when we say "cooperator pod," at any
4 given time how many cooperators were living in that
5 particular pod?

6 A. It varied, because cooperators came on
7 board at different times. But anywhere from six to,
8 I think, as many as around ten. And then even some
9 of those were moved out.

10 Q. And there was also discussion of at least
11 four cooperators abusing the contact visits?

12 A. There were four men that did that.

13 Q. After that happened, basically was that
14 pod broken up?

15 A. Yes.

16 Q. Now, was it in that pod where people have
17 asked you about a pizza party occurring?

18 A. Yes.

19 Q. And what basically happened at that --
20 we'll just call it the pizza party. What happened
21 there?

22 A. Some of the cooperators got together with
23 the education staff at the prison and approached
24 prison administrators about having what we're
25 calling a pizza party where they were able to invite

1 some of the members of their family and sort of
2 formally recognize their decision to try to change
3 their lives.

4 Q. And was that an FBI decision, or was that
5 allowed by the Corrections Department?

6 A. No, that was the Corrections Department's
7 decision. Their facility, their pizza party.

8 Q. Basically, what was served at the party?

9 A. I think it was Domino's pizza and some
10 juice or soda.

11 Q. There was also discussion about those
12 inmates getting what's called tier time and phone
13 calls. Was that an FBI decision, or was this a
14 Corrections decision?

15 A. Corrections.

16 Q. And were they housed in what's called a
17 Level 6 facility?

18 A. Yes.

19 Q. And a Level 6 facility, in terms of
20 numbers, is higher or lower in terms of
21 restrictions?

22 A. It's the highest in New Mexico.

23 Q. Even though they were housed at a Level 6
24 facility, were they given privileges at a lower
25 level, which would be maybe a Level 4?

1 A. Yes.

2 Q. Why was that?

3 A. Because they'd renounced the gang. They
4 were cooperating. So they were reduced to a Level 4
5 status, but because they were cooperating and held
6 there on federal holds, they had to be in a Level 6
7 facility.

8 Q. You were asked last week whether you ever
9 attended a pizza party for the defendants. Do you
10 remember that?

11 A. Yes.

12 Q. Did the defendants invite you to their
13 pizza party?

14 A. No.

15 Q. If had they invited you, would you have
16 gone to their pizza party?

17 A. Yes.

18 MR. CASTLE: I object. That assumes facts
19 in evidence that these defendants had a pizza party,
20 which is not true.

21 THE COURT: Well, he said they didn't, but
22 he wouldn't have --

23 MR. CASTELLANO: And going back to the
24 question, Your Honor, the question by Mr. Lahann was
25 whether he ever attended the pizza party for the

1 defendants.

2 THE COURT: Well, you can ask your
3 question.

4 BY MR. CASTELLANO:

5 Q. Were you ever invited to a pizza party by
6 the defendants?

7 A. No, sir.

8 Q. And if you would have been invited, would
9 you have gone to their pizza party?

10 A. Yes.

11 Q. You mentioned last week on
12 cross-examination about a civil war you said within
13 the SNM Gang. And that's regarding the affair that
14 happened between Julian Romero and Gerald
15 Archuleta's girlfriend or wife. Do you remember
16 that?

17 A. Yes, sir.

18 Q. When you used the term "a civil war within
19 the gang," was there ever an indication that this
20 was more than just one gang?

21 A. No.

22 Q. You were also asked about WITSEC or
23 witness security, including witness security
24 facilities. Do people who cooperate automatically
25 get into those facilities?

1 A. No, sir.

2 Q. For witness security, do they actually
3 have to meet certain criteria?

4 A. Yes, they do.

5 Q. And for people who are released into the
6 community under that program, do they just get cars
7 and money and housing? How does that work?

8 A. No, the Marshal Service will help them
9 find a job, and in some cases receive job training,
10 and then help them get on their feet with their
11 initial -- helping establish an apartment, and rent.
12 And then they're to be self-sufficient.

13 Q. So they get them started. But after that,
14 are they expected to do things on their own?

15 A. Yes.

16 Q. Why is there a need for such a program?

17 A. Well, when people testify against
18 organizations, there is sometimes risk in doing
19 that, and they're in harm's way. So their
20 identities are changed and they're relocated.

21 Q. Is that a discussion you had with
22 cooperators in this case?

23 A. Yes.

24 Q. There has also been a discussion of even
25 some of the cooperators using drugs while

1 incarcerated in this case. Do you remember that?

2 A. Yes.

3 Q. Have some of these cooperators been using
4 drugs most, if not all, their lives?

5 A. Yes.

6 Q. So would you -- were you necessarily
7 surprised when people who were cooperating used
8 drugs?

9 A. I wasn't surprised. I was disappointed.

10 Q. You were also asked about jail calls, even
11 jail calls of the defendants in this case. Do the
12 authorities have the ability to access those calls
13 to see what people have said on the phone?

14 A. Yes.

15 Q. But is it also clear to the people talking
16 on the phone those calls are recorded and subject to
17 monitoring?

18 A. Yes, there is a recording that plays at
19 the beginning of the conversation that says that.

20 Q. You were also asked last week about the
21 Government's ability to offer immunity to other
22 witnesses or certain protections as opposed to
23 defendants who are not able to. Do you remember
24 that?

25 A. Yes.

1 Q. And so is it fair to say you were asked
2 about a Kastigar letter? Is that something that
3 allows -- or at least should promote people to talk
4 honestly, because those statements won't be used
5 against them?

6 A. Yes.

7 Q. And within the last month, do you recall a
8 witness taking the stand who was subpoenaed by the
9 defense team who did not have those protections?

10 A. Yes.

11 Q. Was that person a former gang member?

12 A. Yes.

13 Q. Did that person perjure himself on the
14 stand?

15 MR. CASTLE: Objection, Your Honor.

16 THE COURT: Sustained.

17 BY MR. CASTELLANO:

18 Q. Was that person charged with perjury?

19 MR. CASTLE: Objection. May I approach?

20 THE COURT: Sustained. Let's don't get
21 into that issue.

22 BY MR. CASTELLANO:

23 Q. Well, is it fair to say the defense
24 attorneys or the defense teams have certain
25 interests that they protect, which is their

1 clients'?

2 A. Yes.

3 Q. Is it fair to say, then, on the
4 prosecution side there are different interests, such
5 as prosecution of cases?

6 A. Yes.

7 Q. You were asked questions about a search of
8 Joe and Andrew Gallegos' residence or trailer. Do
9 you remember that?

10 A. Yes.

11 Q. And there was a question about whether
12 someone named Jason Van Veghel was present to point
13 out certain things to you or advise you about
14 certain things.

15 A. Yes, sir.

16 Q. And when you went into the house, could
17 you tell whether or not a carpet had been removed
18 from the home?

19 A. Yes.

20 Q. And is that something you were looking for
21 after having discussions with Mr. Van Veghel?

22 A. Yes, I was.

23 Q. You were also asked about a search for a
24 watch and keys.

25 A. I remember that.

1 Q. From the investigation, who do you believe
2 the watch and keys belong to?

3 A. Adrian Burns, the victim.

4 Q. Were you ever able to find a watch or keys
5 in a field on the side of the road?

6 A. No, sir.

7 Q. When you conducted that search, about how
8 many years had passed from the Adrian Burns murder
9 to the search itself?

10 A. Three and a half to four years.

11 Q. You were also asked about a questionnaire
12 that you use when you question gang members or
13 people associated with a gang. Do you remember
14 that?

15 A. Yes.

16 Q. And I think you mentioned that you'd only
17 actually physically given a copy of the
18 questionnaire to one person that you recalled.

19 A. Yes, sir. Frederico Munoz.

20 Q. Other than that, what was the purpose of
21 the questionnaire for you and other agents?

22 A. It was a questionnaire designed by me to
23 assist not only myself but some of the newer agents
24 on the task force with a litany of questions. I
25 think at one time I had close to 300 questions,

1 between 270 and maybe 300 questions on there.

2 Q. And so other than basically being a guide
3 or template for covering certain topics, was that
4 basically the use of the questionnaire?

5 A. Yes, sir.

6 Q. You were asked about a statement you'd
7 been asked about before, and quoted. And it's
8 basically this: If it's not recorded, it didn't
9 happen. Please tell the jury what you mean when you
10 say something like that.

11 A. Yes. I sometimes give that instruction to
12 an informant operationally when we're out in the
13 field and they're going to use one of our recording
14 devices. I'll tell them that they need to make sure
15 it's on and it stays on, because if it's not
16 recorded, it's like it didn't happen. So it's to
17 emphasize the importance of them not leaving the
18 recording device in the car when they go in to buy
19 the drugs or the guns; make sure that they have it.

20 Q. Now, is it true to say that if it wasn't
21 recorded, that it didn't happen?

22 A. No.

23 Q. So why do you tell them that?

24 A. Just to emphasize the importance of making
25 sure they have the recording device on them when

1 they're operational.

2 Q. And the same situation where you send
3 someone in to do a buy, you referenced last week
4 searching an informant before and after the buy.

5 A. Yes.

6 Q. Even if you trusted that person, would you
7 still search that person?

8 A. Yes, it's part of the protocol, and to
9 make sure they're not going in with any extra funds
10 or drugs.

11 Q. And so even if you trust the person, would
12 you still have questions potentially by defense
13 counsel if you didn't search them?

14 A. Yes.

15 Q. So for example, if everything went fine
16 with the operation but you didn't search them, would
17 it be fair to say that a defense attorney said, "You
18 didn't search this person, Agent Acee, so therefore
19 how do we really know whether he was on the
20 up-and-up?"

21 A. Right. And that's why we do the search,
22 to avoid that line of questioning or doubt.

23 Q. You were asked about the 2001 murders
24 against Mr. Castillo and Mr. Garza and cameras. Do
25 you recall that there weren't any cameras in the

1 pods in 2001?

2 A. There were not.

3 Q. So do we expect not to have any video of
4 what was going on in the pod in 2001?

5 A. No.

6 Q. You also mentioned initially that you
7 start out in kind of a position of distrust when you
8 question defendants or cooperators; is that correct?

9 A. Yes, sir.

10 Q. So at some point, do you do your best to
11 try to corroborate what they say either through what
12 they tell you or through other statements from other
13 people?

14 A. Yes, sir.

15 Q. So does there come a point where that
16 trust has to be earned?

17 A. Yes.

18 Q. I want to ask you about these plea
19 agreements that were entered last week. They were
20 Defendants' DB-1, DC-1, BQ-1, and CO-1. Agent Acee,
21 I want to ask you about these particular plea
22 agreements. I'm currently showing you DB-1, which
23 is a plea agreement for Santos Gonzalez. Can you
24 see that?

25 A. Yes, sir.

1 Q. And from the plea agreement, can you tell
2 if Santos Gonzalez was charged in counts 14, 15, and
3 16 with violent crimes in aid of racketeering?

4 A. Yes, I see that.

5 Q. In count 16 with witness tampering?

6 A. That's correct.

7 Q. Do these counts relate to someone named
8 Jose Gomez?

9 A. Yes.

10 Q. Do you see on page 4 of the plea
11 agreement --

12 THE COURT: Why don't you lift that up and
13 y'all approach on that.

14 (The following proceedings were held at
15 the bench.)

16 THE COURT: In the first trial -- I was
17 going to ask this about the plea agreements last
18 week. In the first trial, though, the defendants'
19 version was redacted. But these are being
20 introduced by the defendants without any redactions.
21 Is that the way y'all want them?

22 MR. BENJAMIN: It's probably clearer to
23 say "defendant," Your Honor.

24 THE COURT: Okay.

25 MR. BECK: Yeah, I think that all of the

1 plea agreements that the United States will enter
2 have the redactions.

3 THE COURT: Okay.

4 MR. BECK: I think the agreement was that
5 if the defendants want to use the factual basis,
6 they can. And they're coming for --

7 MR. CASTLE: I had argued that motion and
8 said that they shouldn't be -- I think the factual
9 basis should not be entered, and we're maintaining
10 that objection. We assumed that because the Court
11 had said that the plea agreement should be redacted,
12 we assumed when those were being offered, that they
13 were redacted. So I don't know whether it really
14 harms our client. But I want to maintain our
15 objection.

16 THE COURT: Well, I think that if there is
17 an objection, which it sounds like there is, then we
18 probably ought to be using the redacted plea
19 agreements. We shouldn't be using ones that have
20 defendants' versions of events; otherwise, it seems
21 to me that's an out-of-court statement probably
22 being offered for the truth, and it would be, I
23 think, testimonial, and I don't think we want that
24 floating around the courtroom. So I think that
25 probably we ought to just be dealing with redacted.

1 MR. BECK: I think we can operate that
2 way, and that's fine. I think the problem here is
3 that Mr. Benjamin got into what the factual basis
4 was, that there was no mention of Mr. Joe Gallegos.
5 So I think we have to rebut that. We can do it
6 without putting in the factual basis in front;
7 that's the Court's prerogative. We can just ask
8 Mr. Acee whether there is anything in there about
9 it, if that would make the Court feel more
10 comfortable.

11 MR. BENJAMIN: We're going to dance around
12 the issue. They drafted the factual basis, and the
13 factual bases has one glaring hole. Nobody
14 identifies a means of communication for Joe
15 Gallegos. In their broad sweeping overviews, the
16 language is "unindicted or unindicted conspirators"
17 that are part of this conspiracy. But the issue
18 we'll have is that they got four people they're
19 going to say are the cooperators to plead to these
20 factual bases, but don't have any facts.

21 THE COURT: Well, I don't think that -- I
22 don't think so. It's a problem. You're going to --
23 these people are going to be on the stand; right?

24 MR. BENJAMIN: No.

25 THE COURT: This one is not.

1 MR. BENJAMIN: There is -- essentially two
2 of the four will.

3 THE COURT: Okay.

4 MR. CASTLE: Actually, I just looked. The
5 four plea agreements don't have anything to do with
6 the 2001 murders. So I don't have a dog in that
7 hunt, so I don't have a Confrontation Clause
8 objection to those, because I don't have standing.

9 THE COURT: Does anybody care? Do you
10 just want to leave the record where it is? These
11 four will continue to have factual background in it,
12 and then the ones that the Government uses will have
13 it redacted.

14 MR. BECK: And I think the way we -- the
15 Court came down on it in the hearings is that if the
16 defendants wanted to put in the factual basis, make
17 it an issue and we can unredact it. But we are
18 putting in redacted --

19 THE COURT: If some defendant has some
20 issue with another defendant doing it, let me know,
21 because I'll probably sustain the objection, keeping
22 it out. If I don't hear otherwise, I'll assume
23 y'all want this for tactical purposes.

24 MR. BENJAMIN: At this point in time
25 essentially the plea agreements that have been

1 authorized of 13 through 16, indirectly Count 14.

2 But there is only one of us still around on that.

3 THE COURT: I'll keep my nose out of it.

4 Sounds like you thought it through, it dawned on me
5 Friday. I didn't ask what we were doing, because I
6 didn't hear anyone saying it would be redacted or
7 anything.

8 MR. BENJAMIN: I appreciate it.

9 (The following proceedings were held in
10 open court.)

11 THE COURT: All right. Mr. Castellano.

12 MR. CASTELLANO: Thank you, Your Honor.

13 BY MR. CASTELLANO:

14 Q. Agent Acee, returning to Defendants' DB1,
15 which is the plea agreement for Santos Gonzalez,
16 I'll go ahead and put this back up here before the
17 jury. As part of these plea agreements, do you
18 understand that each of these four people basically
19 gave to the Court who took the plea a summary of
20 what he or she would admit to for purposes of a
21 plea?

22 A. Yes, sir.

23 Q. And in addition to what was in the plea
24 agreement, did these people also make statements to
25 the judge taking the plea about what they did, which

1 may have had additional information than what was in
2 the paragraph?

3 MR. BENJAMIN: Objection, Your Honor.
4 Facts not in evidence.

5 THE COURT: He can give his understanding.
6 Mr. Acee was at some of these. So if he has a
7 foundation, he can give it, and if he has an
8 understanding, he can give it.

9 MR. BENJAMIN: And the Court said if he
10 has a foundation, that would be the next --
11 foundation.

12 THE COURT: If you can lay that
13 foundation.

14 BY MR. CASTELLANO:

15 Q. Were you present when people, and maybe
16 all of them, pled guilty?

17 A. Yes, I believe all but Shauna Gutierrez.

18 Q. And so as part of pleading guilty before
19 the judge who took the plea, did the judge also ask
20 them -- and I won't worry about what they said right
21 now -- but did the judge also ask them in their own
22 words what they did to make them guilty?

23 A. That's what the judge asked, yes.

24 Q. And so at times would it be something
25 consistent with what's in the plea agreement but may

1 also contain additional information?

2 A. Yes, sometimes they read it verbatim; and
3 sometimes they ad lib it and comment on it.

4 Q. So, for example, on Santos Gonzalez, we
5 see here an indication on February 27 that he agreed
6 with others to harm the person identified as JG?

7 A. Yes, sir.

8 Q. And is JG Jose Gomez?

9 A. Yes, it is.

10 Q. And according to this, he was also an SNM
11 Gang member?

12 A. Yes.

13 Q. And a witness in a formal proceeding?

14 A. Yes.

15 Q. And so when this says "others," what is
16 the Government's theory about whether or not
17 "others" includes Joe Gallegos?

18 A. That is our theory.

19 Q. Ultimately it will be for the jury to
20 decide. But our theory is that Joe Gallegos is part
21 of this; is that correct?

22 A. Yes, sir.

23 Q. Santos Gonzalez, as part of his plea on
24 page 5 of the plea agreement, also on February 27,
25 attempted to harm him by striking him with objects

1 in the head.

2 A. That's correct.

3 Q. Resulting in serious bodily injury to JG?

4 A. Yes.

5 Q. And do you see in the last paragraph of
6 his admissions he committed these crimes and aided
7 and abetted others in the commission of these
8 crimes?

9 A. Yes, sir.

10 Q. So is it your understanding or at least
11 the Government's theory that "others" includes Joe
12 Gallegos?

13 A. Yes, sir.

14 Q. On page 5, paragraph C, do you see the
15 paragraph where it says, "The defendant agrees he
16 has no exculpatory information regarding the
17 co-defendants in this case"?

18 A. Yes.

19 Q. What does that mean?

20 A. That means that the defendant is saying
21 that he has no information tending to show that the
22 defendant or defendants are not guilty.

23 Q. And Mr. Gonzalez, also looking in the same
24 paragraph -- is there an indication that he was not
25 willing to cooperate and would not be called in any

1 proceedings?

2 A. Yes.

3 Q. So is it fair to say that Santos Gonzalez
4 was not cooperating with the Government?

5 A. He was not.

6 Q. I'm now showing you Defendants' BC-1,
7 which is the plea agreement for Brandy Rodriguez.
8 Turning to page 2 of that agreement, do you see
9 where she was also charged with a conspiracy to
10 murder, attempted murder, including an assault
11 resulting in serious bodily injury and assault with
12 a dangerous weapon as well as witness tampering?

13 A. Yes, sir.

14 Q. And are these the same counts we just
15 discussed that involved Jose Gomez as a victim or
16 alleged victim?

17 A. They are.

18 Q. And as part of this plea agreement, did
19 this defendant, Brandy Rodriguez, also have to admit
20 to the elements of the offense in this case?

21 A. Yes.

22 Q. Which was to include that the crimes were
23 committed either for something of value in paragraph
24 E, 4E, or for the purpose of getting entrance to or
25 maintaining or increasing position in the

1 enterprise?

2 A. That's correct.

3 Q. Now, Ms. Rodriguez' plea agreement -- this
4 is page 5 of 10 on that same exhibit. Was there an
5 indication here that Ms. Rodriguez admitted that the
6 Government could prove its case against her by
7 including the fact that the Sindicato de Nuevo
8 Mexico, or SNM Gang, engaged in such things as
9 racketeering activity?

10 A. Yes, sir.

11 Q. In interstate commerce?

12 A. Correct.

13 Q. Among those other things in the first
14 paragraph, do you see where Ms. Rodriguez also
15 conspired with others to harm JG?

16 A. Yes.

17 Q. And with Ms. Rodriguez, is it the
18 Government's theory that "others" includes Joe
19 Lawrence Gallegos?

20 A. Yes, sir.

21 Q. And on page 6, the next paragraph, do you
22 see it's slightly different in that Ms. Rodriguez
23 includes some of the things that she did, which
24 included kicking Jose Gomez?

25 A. Yes.

1 Q. And do you see in the last paragraph where
2 she admitted that Jose Gomez was beaten to prevent
3 him from testifying in a formal proceeding?

4 A. Yes.

5 Q. Do you also see an indication by Brandy
6 Rodriguez that she agreed that she had no
7 exculpatory information regarding the co-defendants
8 in this case?

9 A. Yes, sir.

10 Q. And would that include Joe Lawrence
11 Gallegos?

12 A. Yes, sir.

13 Q. Can you tell the members of the jury
14 whether Brandy Rodriguez was cooperating with the
15 Government at that time?

16 A. Not at that time, no.

17 Q. And do you expect her to be cooperating
18 even now?

19 A. No.

20 Q. I'm showing you Defendants' BQ-1, a plea
21 agreement for Shauna Gutierrez.

22 MR. BURKE: Your Honor, I do object, and I
23 wonder if we could approach the bench.

24 THE COURT: You may.

25 (The following proceedings were held at

1 the bench.)

2 MR. BURKE: I object to all of this. I
3 should not have waited this long. This is
4 prejudicial. This is just a document drafted by the
5 prosecution attorneys. I'm not sure why counsel for
6 Joe Gallegos is allowing this, but I now object.
7 You said earlier when we were at the bench if other
8 counsel objects, you would revisit this. I'm asking
9 you to revisit this. This is just self-promoting by
10 the prosecutors at this point.

11 THE COURT: How far does your objection
12 extend? Do you want to go back and redact these
13 documents? Do you just not want them highlighting
14 the statements of -- tell me what you want me --

15 MR. BURKE: I think if I ask you to go
16 back, it would just highlight it more. So I think
17 I've let -- what's your phrase -- the toothpaste is
18 out of the tube. So -- anyway.

19 THE COURT: At this point, what do you
20 need or want?

21 MR. BURKE: I don't think they're allowed
22 to self-vouch for exculpatory evidence. SNM is a
23 conspiracy, SNM is an enterprise, the whole factual
24 basis.

25 THE COURT: Let's do this: Let's not

1 use -- let's not use any more -- this is your last
2 one, isn't it?

3 MR. BENJAMIN: This is three of four.

4 THE COURT: The two -- why don't you use
5 the facts, see if this will work for you. Let's not
6 use the factual basis to have Mr. Acee testifying
7 about the Government's theory. I think that might
8 be the way to deal with it, that sort of box of
9 questions. I think you're going to have plenty of
10 opportunities to get the theory out other ways, and
11 do you think that's sufficient if --

12 MR. BURKE: Yes, Your Honor. Thank you
13 very much.

14 THE COURT: Does that work for everybody?

15 MR. BENJAMIN: Your Honor, the issue with
16 Special Agent Acee, one of the reasons why I'm not
17 objecting to this line of questioning, Your Honor,
18 is their statements aren't true, because Brandy
19 Rodriguez does have exculpatory information. She --

20 THE COURT: I don't think anybody is going
21 to shut down anyone from doing anything right at the
22 moment. It may come up later.

23 MR. BENJAMIN: Your Honor, I plan to
24 introduce this, and I think the Government will
25 request a limiting instruction, but this is notes

1 from a debrief where Agent Acee was present, that he
2 was told that Joe Gallegos had nothing to do with
3 the hit.

4 THE COURT: Okay. Well, let's take them
5 one at a time. Let me deal with the Government's
6 questioning here, and then if you want to go a
7 different direction, I'll have to sort it out among
8 the defendants. But understand where I'm going.

9 MR. BENJAMIN: Yes, Your Honor.

10 MR. SOLIS: How many more plea agreements,
11 estimate, on three of four --

12 MR. CASTELLANO: Shauna Gutierrez and Paul
13 Rivera, regarding Jose Gomez.

14 MR. SOLIS: I see.

15 (The following proceedings were held in
16 open court.)

17 THE COURT: All right, Mr. Castellano.

18 MR. CASTELLANO: Thank you, Your Honor.

19 BY MR. CASTELLANO:

20 Q. And when we're talking about the formal
21 proceeding, do you recall that there is a formal
22 proceeding pending against Joe Gallegos?

23 MR. BENJAMIN: Objection, Your Honor,
24 foundation.

25 THE COURT: Well, if he knows. Ask him if

1 he knows first. That's pretty much the foundational
2 question. Overruled.

3 A. Yes.

4 BY MR. CASTELLANO:

5 Q. And in that formal proceeding, was that a
6 case in which Jose Gomez was a witness against Joe
7 Gallegos?

8 A. Yes.

9 Q. And in fact, in Count 13 of the
10 indictment, that involves an assault allegedly by
11 Joe Gallegos against Jose Gomez?

12 A. A 2015 assault yes.

13 Q. So in that particular case, was Jose Gomez
14 a witness against Joe Gallegos?

15 A. Yes.

16 Q. Agent Acee, how do you bring a cold case
17 back to life?

18 A. Develop a new lead and then pursue that
19 lead, make an arrest.

20 Q. Is that basically the plan, which you did
21 in terms of this case, trying to bring cold cases
22 back to life?

23 A. Yes, sir.

24 MR. CASTELLANO: I pass the witness, Your
25 Honor.

1 THE COURT: All right. Thank you,
2 Mr. Castellano.

3 Mr. Acee, you may step down. Do you
4 want --

5 MR. CASTLE: Could I have just a brief --

6 THE COURT: Recross. All right,
7 Mr. Castle.

8 RECROSS-EXAMINATION

9 BY MR. CASTLE:

10 Q. Good morning, Agent.

11 A. Good morning.

12 Q. I think Friday you had testified that -- I
13 think you testified on approximately 12 occasions?

14 A. Hours, I think I said.

15 Q. But as far as these defendants, there was
16 only one hearing in court, and then a brief time
17 period over the phone that you testified; is that
18 right?

19 A. Are we not counting when everyone was in?

20 Q. Well, as far as issues where we were --

21 A. Yes, sir.

22 Q. Now, can you estimate the number of SNM
23 members or people that were members of the SNM over
24 the years?

25 A. To include dropouts?

1 Q. Yes.

2 A. The Department of Corrections estimates
3 500. That seems to be a ballpark.

4 Q. So that was, like, the largest number at
5 one time, or was that over the years?

6 A. I tend to think it's more over the years.

7 Q. Okay. And how many people out of those
8 500 either claimed to be or were recognized as at
9 some level of leadership?

10 A. Just a handful.

11 Q. Well, do you recall testifying previously
12 that it was somewhere between 60 to 80?

13 A. That claim they were leaders?

14 Q. Yes. Let me ask you -- let me break that
15 down. There's a difference between claiming to be a
16 leader and actually being a leader; right?

17 A. Yes.

18 Q. So sometimes there are people that would
19 claim to be a leader that may not have actually been
20 a leader?

21 A. I think that's possible.

22 Q. And there are people that try to be
23 leaders by doing perhaps certain acts, but didn't
24 end up becoming a leader?

25 A. I think that's fair to say.

1 Q. So it's kind of -- sometimes these violent
2 acts that you're talking about, it's a way to kind
3 of become a leader; right?

4 A. Putting in work. I think it's first and
5 foremost a way to join the gang. But leaders need
6 to lead from the front, and that's a good way to get
7 there.

8 Q. The Government went through a list of
9 people, do you recall, that came forward after the
10 declination letter, after the 2015 letter. Do you
11 recall that the Government went through a series of
12 names? Do you recall that?

13 A. Yes, I think so.

14 Q. I think the first one he mentioned was
15 Mario Rodriguez came forward?

16 A. He's come forward, yes.

17 Q. And he has nothing to say about the 2001
18 murders; is that right?

19 A. I don't think he does.

20 Q. And there was a Timothy Martinez. He also
21 checked off on a list?

22 A. Yes.

23 Q. And Ruben Hernandez and Javier Alonso?

24 A. Yes.

25 Q. None of those people came forward with

1 information concerning the 2001 murders?

2 A. I don't think Timothy Martinez did. I'm
3 not sure about the other two. I'd have to look at
4 their statements.

5 Q. Now, one of the people that they talked
6 about was an individual by the name of Gerald
7 Archuleta, Styx; right?

8 A. Yes, sir.

9 Q. His family is from out of state; right?

10 A. I think his family is from here. He just
11 happened to move out of state after he got out of
12 prison, his last prison stint.

13 Q. Now, there was a discussion about a
14 possibility that these individuals who cooperate --
15 or at least some of them -- might still get a life
16 sentence. Do you recall that?

17 A. Yes, sir.

18 Q. But if they didn't work out this
19 agreement, this 5K1.1 agreement, there would be no
20 way for them to get below life?

21 A. Without a 5K?

22 Q. Yes.

23 A. I believe you're right.

24 Q. We've talked about a number of events that
25 I think you said you were disappointed in by the

1 cooperators --

2 A. Yes.

3 Q. -- trying to access teen porn, smuggling
4 drugs into the facility, using drugs. I think
5 another one of the examples might have been, you
6 know, some inappropriate things happening during
7 visitation, et cetera, et cetera. Do you recall
8 those events, without detailing them all again?

9 A. Yes, sir.

10 Q. After those things happened, did the
11 Government withdraw their 5K1.1 agreement?

12 A. Not that I'm aware of. But I don't think
13 they've submitted that yet. I think it's still in
14 the works.

15 Q. You talked about some of these fellows
16 getting \$50 a month on their books, approximately?

17 A. Yes, sir.

18 Q. Are any of them still getting that?

19 A. Yes.

20 Q. When does that stop?

21 A. Well, if they continue to be FBI
22 informants, it will last until we either make a
23 change or they stop being informants.

24 Q. Have they been informed when that will
25 stop?

1 A. No.

2 Q. There was an indication that the pizza
3 party was to honor, I guess, these individuals for,
4 I think your term was, changing their lives?

5 A. To recognize and honor, yes.

6 Q. Was that pizza party before or after those
7 events happened that you said you were quite
8 disappointed in?

9 A. It was before.

10 Q. And there were questions about whether you
11 would go to a pizza party if the defendants were
12 able to throw one; right? Do you recall that?

13 A. Yes.

14 Q. These men are locked down 23 hours a day
15 every day that they've been waiting for trial; isn't
16 that your understanding?

17 A. They're definitely incarcerated. I'm not
18 sure what kind of facility they're in.

19 Q. The only hour they're allowed out is in a
20 separate cage for themselves to exercise in?

21 A. If you're telling me that, I'm not
22 discrediting it, but I don't know.

23 Q. Is there any indication, in your
24 knowledge, that any of these men have an opportunity
25 to do anything like the kinds of things that the

1 cooperators have been allowed to do?

2 A. I can only think of one circumstance, but
3 I'm not sure.

4 Q. You indicated that the questionnaire was
5 given by you to only one individual, Mr. Munoz, and
6 his lawyer?

7 A. That's all that I can remember, yes.

8 Q. How much later after that did they return
9 it?

10 A. I'm not sure, because he gave it to his
11 attorney, who gave it to me. I think within
12 about -- maybe about a week.

13 Q. Okay. And did -- was it filled out by
14 Mr. Munoz?

15 A. Yes, sir.

16 Q. So where was Mr. Munoz being held? Where
17 was he being held at that time? Was it in the
18 cooperator pod?

19 A. I'm not sure. But to answer your
20 question, I think he was at PNM.

21 Q. He was, at least for a period of time, in
22 the cooperator pod; is that correct?

23 A. Yes, sir.

24 Q. There was an indication that there was no
25 video in the pod in 2001 that you were able to

1 locate?

2 A. Correct.

3 Q. And in fact, there weren't. You went and
4 found out that there were no cameras back then that
5 were in those pods.

6 A. Yes, sir.

7 Q. You also learned that there weren't
8 cameras in the general areas of the prison at that
9 point in time.

10 A. Did you say that there were not?

11 Q. There were not.

12 A. No, the only representation that I got
13 about cameras is they may have had some live feeds,
14 but they definitely didn't have recordings.

15 Q. And you also looked to see if there
16 were -- if there was any evidence that there were
17 officers with hand-held video cameras and video
18 recording; right?

19 A. Yes, sir, and we found no such.

20 Q. You found no such. And also, that there
21 were officers taking photos on the roofs of the
22 prisons. You looked for that, too; right?

23 A. We didn't find anything like that, sir.

24 Q. And the reason you were looking for those
25 is because a witness by the name of Leonard Lujan

1 claimed that there were officers with hand-held
2 video cameras videoing everything that he was
3 relaying to you and also taking still photos. Or is
4 that at least one of the reasons?

5 A. Well, my reason was because you asked me
6 about it. I didn't recall Mr. Lujan saying that,
7 but I remember you asking me, so I went and checked.

8 Q. Okay. Thank you.

9 MR. CASTLE: I have no further questions.

10 THE COURT: Thank you, Mr. Castle.

11 Do you have something further,
12 Mr. Benjamin?

13 MR. BENJAMIN: I do, Your Honor. If I
14 could have one second.

15 THE COURT: You may.

16 RECROSS-EXAMINATION

17 BY MR. BENJAMIN:

18 Q. Good morning, Agent.

19 A. Good morning.

20 Q. Did Mario Rodriguez fill out one of your
21 questionnaires? Do you know --

22 MR. BENJAMIN: Actually, may I approach,
23 Your Honor?

24 THE COURT: You may.

25 A. I'm assuming he did. You're about to show

1 me.

2 BY MR. BENJAMIN:

3 Q. Yes, you're correct.

4 A. No. This is my writing. I filled this
5 out.

6 Q. I understand that you filled that out in
7 Mario's presence, but with him providing the
8 answers?

9 A. I ask the question and he provides the
10 answer.

11 Q. And the notes you're filling in on the
12 questionnaire.

13 A. On this particular debrief, I did some on
14 my questionnaire and some I also did on regular
15 notetaking paper.

16 Q. Okay. Thank you.

17 And we heard that some people were going
18 to testify because they're cooperators, and some
19 people had decided that they weren't going to
20 testify, I think was the testimony on redirect;
21 correct?

22 A. Yes, sir.

23 Q. And if those people aren't testifying for
24 the Government, the defense can't call those people;
25 correct?

1 A. I don't --

2 Q. A defendant still has the ability to
3 assert a Fifth Amendment right up through
4 sentencing; right?

5 MR. CASTELLANO: Objection, calls for a
6 legal conclusion.

7 THE COURT: If he knows the answer to it,
8 he can answer it. Overruled.

9 A. My understanding is the defendant never
10 has to talk. So, yes.

11 BY MR. BENJAMIN:

12 Q. Okay. And when we're looking at plea
13 agreements, those are drafted by the Government?

14 A. Yes, sir.

15 Q. And the Government provides essentially --
16 because -- let's start at the beginning. The
17 Government drafts the charges in a case; correct?

18 A. Yes, sir.

19 Q. And that's the Government's way of saying,
20 "This is what we believe we can show at trial"?

21 A. Yes.

22 Q. And then if somebody decides to plead
23 guilty, the person that's pleading guilty is
24 agreeing with what's being said?

25 A. Yes. But there's some --

1 Q. Negotiating.

2 A. -- negotiating, but yes.

3 Q. And that negotiation can take many forms.
4 Sometimes the Government modifies or files new
5 charges?

6 A. Sure. By, like, information, yes, I've
7 seen that.

8 Q. Okay. So the Government can file new
9 charges, amend the charges, dismiss charges or, for
10 lack of a better term, modify them any which way
11 they want; is that fair?

12 A. As long as the defendant agrees, yes.

13 Q. Well, the Government can modify charges or
14 do anything with any allegations they have without
15 the defendant's consent.

16 A. Yes.

17 Q. I mean, for instance, the Government can
18 dismiss charges if they wanted to.

19 A. Correct.

20 Q. Okay. And I don't know why, but a
21 defendant could object to that for some unknown
22 reason; right?

23 A. It would be crazy, but I guess.

24 Q. Right. So if the Government and the
25 defendant come to an agreement, then you can have a

1 plea; is that fair?

2 A. Yes, sir.

3 Q. Okay. And that's true of essentially
4 anything? And a plea, then, is supported by a
5 factual basis?

6 A. Yes, sir.

7 Q. Okay. And that factual basis can contain
8 things like agreements over the amount of drugs that
9 were involved in the offense?

10 A. I imagine, yes.

11 Q. Okay. The amount; whether or not there
12 were any weapons in the offense?

13 A. Yes.

14 Q. Okay. A defendant's role in the offense?

15 A. Yes.

16 Q. And just so we're clear in talking about
17 role, in a federal case there's different levels of
18 roles. Somebody could be a leader, a regular
19 player, or a minor player; correct?

20 A. Yes.

21 Q. Okay. So you can specify, kind of, I was
22 the getaway driver, so to speak, or I was the person
23 who went in the bank.

24 A. I suppose, yes.

25 Q. Okay. And the person who proposes that

1 language that we saw in the plea agreement is the
2 Government; correct?

3 A. The initial draft is, yes.

4 Q. Okay. And then the defendant can say,
5 "Sorry, I'm not willing to sign that, but I will do
6 this"; right?

7 A. Right.

8 Q. Okay. And then ultimately the defendant
9 agrees with what was in the plea agreement and the
10 factual basis and if they were going to plead
11 guilty.

12 A. Correct.

13 Q. Okay. So you were asked on redirect by
14 Mr. Castellano about the theory of the case for the
15 Government; correct?

16 A. Yes.

17 Q. That Joe Gallegos is the one that was one
18 of the people who aided and abetted the others
19 involved in the language that was read to you;
20 right?

21 A. Yes. I thought he said "involved," but
22 yes.

23 Q. Okay, and fair to say that probably right
24 before "involved" is "aided and abetted" and "others
25 involved." But he was one of the others that you

1 believed was involved?

2 A. Yes, sir.

3 Q. But none of the four plea agreements say
4 his name or his initials?

5 A. I thought one did. I may be mistaken, but
6 I thought one out of the three did.

7 MR. BENJAMIN: May I approach the
8 exhibits, Your Honor?

9 THE COURT: You may.

10 MR. BENJAMIN: May I approach the witness,
11 Your Honor?

12 THE COURT: You may.

13 BY MR. BENJAMIN:

14 Q. Okay.

15 A. Sir, I found what I was referring to. It
16 may be in a different context than you're asking me,
17 though. I do see his name in one of the four.

18 Q. Just so we're on the same sheet of music,
19 who are we talking about?

20 A. I'm looking at Mr. Rivera's plea where it
21 mentions Joe Lawrence Gallegos in the bold hold
22 language in paragraph 2.

23 Q. Okay.

24 A. Do you want me to read it?

25 Q. Well, what that's saying is that that

1 doesn't -- let me do this.

2 MR. BENJAMIN: May I approach?

3 THE COURT: You may.

4 A. The one on top.

5 MR. BENJAMIN: And Your Honor, I would
6 request permission to publish CO-1.

7 THE COURT: You may.

8 BY MR. BENJAMIN:

9 Q. We're talking about the very, very
10 essentially last sentence on page 4 which says, JG,
11 Jose Gomez, was a witness against Joe Lawrence
12 Gallegos, an SNM Gang member; correct?

13 A. Yes, sir.

14 Q. That doesn't say that Joe Gallegos
15 essentially provided any direction or instructions
16 for this assault; that's a fact that was put in
17 there about a witness -- being a witness; right?

18 A. It just states that, yes, Jose Gomez was
19 going to be a witness against Joe Lawrence Gallegos.

20 Q. And Paul Rivera had no idea what case
21 Joe -- what case Jose Gomez was going to be a
22 witness in, did he?

23 A. I'm not sure. I don't think he knew which
24 case.

25 Q. Right. You didn't interview him, but

1 you've reviewed Paul Rivera's witness statement;
2 right?

3 A. Yes. So I'm just going off memory here.
4 I don't know that he knew what case.

5 Q. He came up with something out of the blue,
6 and the fact is Paul Rivera says that Joe doesn't
7 like him at all; right?

8 MR. CASTELLANO: Objection, calls for
9 hearsay.

10 MR. BENJAMIN: To the extent he knows,
11 Your Honor.

12 THE COURT: Well, it sounds like it may be
13 being offered -- an out-of-court statement for the
14 truth. So I'll sustain.

15 MR. BENJAMIN: Your Honor, I would suggest
16 it's being offered to essentially impeach the
17 statement that is on paragraph 4.

18 THE COURT: Well, I still sustain the
19 objection.

20 BY MR. BENJAMIN:

21 Q. None of these -- you would agree with me
22 that these statements could have been drafted to
23 say, "I, at the direction of Joe Lawrence Gallegos,
24 assaulted Jose Gomez"; correct?

25 A. I think the prosecutors could have written

1 anything they wanted in there. I just don't know if
2 the defendant would have agreed.

3 Q. Well, but it might be because it wasn't
4 true, then; right?

5 A. I think anything is possible.

6 Q. And you attended a debrief on December 16,
7 2016, is that right, of Brandy Rodriguez?

8 A. I've had a few debriefs with her.

9 Q. And do you remember her telling you that
10 day that Joe Lawrence Gallegos had nothing to do --

11 MR. CASTELLANO: Calls for hearsay.

12 THE COURT: Sustained.

13 MR. BENJAMIN: Your Honor, that's offered
14 for direct impeachment of what he testified to.

15 THE COURT: It's an out-of-court statement
16 being offered for the truth. Sustained.

17 BY MR. BENJAMIN:

18 Q. On September 16, was there any information
19 provided by Brandy Rodriguez suggesting that --

20 MR. CASTELLANO: Objection. It's going to
21 call for hearsay.

22 Q. -- there was a direction provided?

23 THE COURT: Sustained.

24 MR. BENJAMIN: Your Honor, may I approach
25 the court reporter?

1 THE COURT: You may.

2 MR. BENJAMIN: Pass the witness.

3 THE COURT: Thank you, Mr. Benjamin.

4 Mr. Castellano, any further examination of
5 Mr. Acee?

6 MR. CASTELLANO: No, Your Honor. But we
7 will be calling him later in the trial.

8 MR. SOLIS: May I?

9 THE COURT: You may.

10 RECROSS-EXAMINATION

11 BY MR. SOLIS:

12 Q. Good morning, Agent Acee. How are you,
13 sir?

14 A. Good morning.

15 Q. I'll be brief. One of the advantages of
16 being down in the batting order, brilliant counsel
17 have the opportunity to ask you questions and so
18 I'll ask you just a few. One is to follow up on
19 Mr. Castle's brilliant questions. You know he's a
20 brilliant lawyer. You know that by now; right?

21 A. We can argue about that.

22 Q. And he had discussed with you -- or at
23 some point, I believe it was early on, the quid pro
24 quo nature of cooperators, the 5K, and the
25 sentencing scheme. Do you remember that?

1 A. I remember a lot of questions about 5K.

2 Q. You're not unfamiliar with the term or the
3 phrase "quid pro quo"?

4 A. Yes.

5 Q. You're not unfamiliar?

6 A. I am not unfamiliar with that.

7 Q. That's basically the Latin phrase for
8 "something for something"; right?

9 A. Yes.

10 Q. And in many respects, that's exactly what
11 happens with the cooperators, the Kastigar, the
12 proffer, the 5K, and then the sentencing scheme that
13 we've talked about for a while now, since Friday,
14 and then again today. Would you agree with that?

15 A. Something for something?

16 Q. Sure.

17 A. More or less, yes.

18 Q. Well, the "more" is that if the
19 cooperator, the defendant at that moment, is signed
20 up, let's say, someone phrased it as a contract; I
21 think again, Mr. Castle. And to extract or to
22 provide the benefit that he's expecting, he has to,
23 in turn, deliver that something that the Government
24 wants; isn't that true?

25 A. He has to deliver something, but it's not

1 anything. The something in particular is his
2 honest --

3 Q. Something the Government wants. Wouldn't
4 you agree, Agent Acee?

5 A. Well, yes, as a representative of the
6 Government, I want honest answers.

7 Q. Right. But the Government enlisted the
8 cooperation of the cooperators -- that sounds
9 redundant -- in the hopes of obtaining some benefit
10 for the Government. And so you expect that when you
11 sign him up and you go through the proffer,
12 Kastigar, then the 5K1, and the sentencing as we
13 described; isn't that true?

14 A. Somewhat. I mean, I opened each of these
15 cooperators. I'll take responsibility for
16 developing each of these cooperators. What I'm
17 looking to do is, one, dismantle the gang; two, gain
18 valuable and honest information from each of those
19 men to help me do that.

20 Q. Let me phrase it this way, then, if -- and
21 there is no secret here that -- I think
22 Mr. Castellano illustrated on the overhead the photo
23 of Mr. Eugene Martinez. You're familiar with Eugene
24 Martinez; correct?

25 A. I am.

1 Q. As we all are. And the jury will be
2 shortly, if they aren't already. And if Eugene
3 Martinez said to you or here on the stand, whenever
4 his time comes, that, "You know, I don't want to go
5 forward with this. I'm done. I made it all up," or
6 something along those lines, now, he's not giving
7 you what you want, so he's not going to be the
8 beneficiary of any 5K, Kastigar, proffer, sentencing
9 scheme that we talked between; isn't that true?

10 A. If he said anything under oath, I'd try to
11 charge him.

12 Q. That's not the answer to my question,
13 though. He would not receive that benefit the
14 Government expects to receive from his participation
15 in the 5K or proffer and sentencing scheme that
16 we've talked about here for a couple days now.

17 A. It's not my decision to make, but I would
18 not expect him to, no.

19 Q. Okay. All right. So let me switch gears
20 here, Agent Acee, and -- these are my notes.

21 MR. SOLIS: Could I have one moment, Your
22 Honor?

23 THE COURT: You may.

24 BY MR. SOLIS:

25 Q. So the names -- I'm going to give a little

1 bit of context to my questions and they refer mostly
2 to 2001 or exclusive to 2001, and at Southern in
3 yellow pod. You're familiar with all that; right,
4 Agent Acee?

5 A. Yes, sir.

6 Q. Thank you. And I'll name these
7 individuals: Ray Molina, Martin Chacon, Allen
8 Patterson, Christopher Chavez, Jesse Ibarra, Eugene
9 Martinez, Joseph Otero, Augustine Saenz, Lorenzo
10 Baca (sic) and Jeremiah Baca. Are you familiar with
11 those players there, sir?

12 A. Yes.

13 Q. Which of those -- you being the case
14 agent, you probably know this. Which of those did
15 not provide a DNA sample?

16 A. I believe, off the top of my head, in that
17 pod -- could I look at the names again? I may
18 recognize it.

19 Q. Sure. I don't want to go into hearsay
20 objections, so I'll read them off to you. I'll read
21 them slowly so you can -- Ray Molina, Martin Chacon,
22 Allen Patterson, Chris Chavez, Jesse Ibarra, Eugene
23 Martinez, Joseph Otero, Augustine Saenz, Lorenzo
24 Mora, and Jeremiah Baca.

25 A. I'm hesitating because I recall two men

1 didn't.

2 Q. Okay.

3 A. And I'm only remembering one right now.

4 It's from the other pod.

5 Q. Okay. But there were individuals in this
6 pod -- that is, yellow pod, 2001 -- that did not
7 provide DNA samples.

8 A. I'm just not committing to that because I
9 need to refer to the reports. I don't know, off the
10 top of my head.

11 Q. So for our purposes, let me phrase it this
12 way: Certainly Christopher Chavez and Allen
13 Patterson did provide DNA swabbings for DNA
14 analysis; correct?

15 A. I believe they did.

16 Q. Okay. Now, you being the case agent,
17 you're also familiar with the following. You know
18 that one of the names I read off was Martin Chacon.
19 You've agreed with that; right?

20 A. Yes.

21 Q. He was in that pod, in the yellow pod, in
22 2001.

23 A. Yes.

24 Q. That involved the murder of Rolando Garza
25 just back before the jury; right?

1 A. Yes.

2 Q. And in Martin Chacon's home -- they call
3 it their home or their cell -- in that sink was
4 found a T-shirt with what appeared to be blood;
5 right?

6 A. Yes.

7 Q. Okay. And in his home was that noose --
8 well, a ligature fashioned by shoelaces with some
9 sort of loops at the end for what one would surmise
10 being able to hold the ligature.

11 A. Did you say in his sink?

12 Q. Yeah.

13 A. I thought it was under the sink.

14 Q. Certainly in his room, or his cell, his
15 home.

16 A. His cell, I agree.

17 Q. And Martin Chacon's home, cell, was on the
18 bottom tier, bottom floor, if we can call it that,
19 much -- well, as was Rolando Garza's room, home,
20 cell?

21 MR. CASTELLANO: At this point, I'll
22 object. Beyond the scope of cross-examination.

23 THE COURT: What do you link it up with in
24 the redirect?

25

1 BY MR. SOLIS:

2 Q. Well, AUSA Castellano discussed with you
3 on redirect -- discussed with you the layout, if you
4 will, of the yellow pod in 2001 addressing -- and I
5 walked in an L-shaped fashion here on Friday.
6 Remember, he addressed that with you?

7 A. Yes, sir.

8 Q. And he addressed that with you to, I
9 guess, provide some illustration for the jury as to
10 where the cells of the occupiers of yellow pod might
11 be situated in that pod?

12 A. In relation to the bubble, I think, yes.

13 Q. Sure. And AUSA Castellano discussed that
14 with you in redirect late Friday. Do you remember
15 that?

16 A. I believe so, yes.

17 Q. So that redirect examination having to do
18 with the layout of the pod in an L shape with the
19 bubble looking out into the cells, homes, rooms, as
20 they call them, is the subject of my inquiry now.
21 You've been able to determine that?

22 MR. CASTELLANO: Same objection, Your
23 Honor. We didn't discuss evidence collection.

24 THE COURT: Well, I think it's close
25 enough to the redirect. Overruled.

1 MR. SOLIS: Thank you.

2 BY MR. SOLIS:

3 Q. So the question was Mr. Chacon -- Martin
4 Chacon, we talked about his cell is on the bottom
5 tier of that pod. Do you remember that?

6 A. I remember you saying that a moment ago.
7 I believe it was on the bottom tier.

8 Q. As was Mr. Garza's, the deceased, Rolando
9 Garza; correct?

10 A. Yes, sir.

11 Q. And I know as the case agent, you also
12 know that Christopher Chavez's pod was on the top
13 tier. Do you remember that?

14 A. His cell on the top tier, yes.

15 Q. What did I say?

16 A. Pod.

17 Q. I'm sorry. I meant to say cell, home. I
18 beg your pardon about that. On the top. And you,
19 being the case agent, you would know that through
20 that bubble, he's at a direct diagonal of you from
21 the correctional officer in that bubble on top.

22 A. Like they're at the same level?

23 Q. Yes, sir.

24 A. Yes.

25 Q. On the top tier; is that right?

1 A. Yes, the top tier of that pod is at about
2 the same level that the guard or the correctional
3 officer looking out the window would be at.

4 Q. The point is, he's not at the bottom tier;
5 he's at the top.

6 A. Correct. His house is at the top.

7 Q. Here -- and Agent Stemo is one of your
8 assistants, Agent Acee?

9 A. She's a co-case agent on the case.

10 Q. Co-case agent. Seventeen years later, in
11 January of this year, she went to have a discussion
12 with one of the occupiers of that pod, Lorenzo Mora.
13 Of course, you know that because you're the case
14 agent; right?

15 A. You're giving me a lot of credit.

16 Q. Well, you being the case agent, you
17 know -- well, you know, you do the heavy lifting, I
18 suppose. Do you have any reason to doubt that she
19 went to interview in January of this year an
20 occupier of that pod, Lorenzo Mora?

21 A. I don't. She interviews a lot of people
22 and works hard. I'm sure she did.

23 Q. But you're not familiar with the details
24 of that?

25 A. That interview?

1 Q. Correct.

2 A. As I sit here now, no.

3 Q. Okay. But it was here, 17 years later,
4 that she went to have a discussion with Mr. Mora.
5 That much you know.

6 A. Yes.

7 MR. SOLIS: I'll pass the witness.

8 THE COURT: Thank you, Mr. Solis.

9 Mr. Castellano, any further redirect of
10 Mr. Acee?

11 MR. CASTELLANO: Yes, Your Honor.

12 THE COURT: Mr. Castellano.

13 REDIRECT EXAMINATION

14 BY MR. CASTELLANO:

15 Q. So you were asked about the 5K provision
16 of the guidelines which allows the Court to sentence
17 below -- or lower a sentence; is that correct?

18 A. Yes, sir.

19 Q. Is there any 5K agreement in place now?
20 In other words, has the Government filed anything
21 that you know of to reduce anybody's sentence?

22 A. No, sir.

23 Q. And is the anticipation in terms of
24 whether there is a quid pro quo, or this for that,
25 that the filing of a 5K motion would be following

1 truthful testimony and providing assistance to the
2 Government?

3 A. Yes.

4 Q. So if that even happens, it won't be until
5 the cooperation is complete; is that true?

6 A. Yes, sir.

7 MR. CASTELLANO: I pass the witness, Your
8 Honor.

9 THE COURT: All right. Thank you,
10 Mr. Castellano.

11 All right. Mr. Acee, you may step down.
12 Thank you for your testimony.

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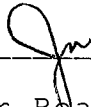
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2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 5th day of May, 2018.

13
14 
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